HABEAS CORPUS AS A POST-CONVICTION REMEDY

Antonio R. Bautista

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*Antonio R. Bautista**

I. INTRODUCTION

The premium that our society puts on personal freedom is highlighted by the availability of the privilege of the writ of *habeas corpus*. It is an ancient writ, known as the Great Writ of Liberty, and our Constitution prohibits the suspension of its availability except in extreme cases of great national stress. The writ has, for close to two centuries now, served as an avenue for relief from a wrongful conviction which has gone past the stage of appellate review. It is the most widely used means of attacking final judgments of conviction.

There are no stringent procedural requirements for the filing of a *habeas corpus* petition. No particular form is prescribed and any person interested in the release of a detained person may file the petition. Neither is the availability of other collateral remedies, such as *certiorari* or *mandamus*, a constricting factor. But the person in whose behalf the petition is filed should actually be restricted in his personal liberty.

The availability of the *habeas* writ as a mode of collateral attack of a final judgment of conviction reflects a fundamental policy choice. At balance is the need for certainty and stability in judicial decisions especially of conviction for crime, on the one hand, and the need on the other hand to assure that no person is unjustly deprived of his liberty. The scales are tilted more in favor of the convict under United States federal *habeas* law than in our jurisdiction, but there are indications that we are moving closer to the United States federal norm.

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Where *habeas* is available as a mode of post-conviction review, there is a marked disinclination in our jurisdiction to allow a relitigation of factual issues already adjudicated upon in the original action which eventuated in the judgment of conviction under review. In contrast, *de novo* factual review is expressly authorized now by United States federal statute.

The meatiest portion of this article is in its Part VI, on the scope of matters which may be reviewed on *habeas*. This article may well be the first comprehensive treatment of Philippine Supreme Court decisions, some one hundred all told, on *habeas corpus* as a mode of post-conviction review. Emerging from this examination of Philippine Supreme Court opinions are imperceptibly shifting doctrinal strands showing no truly coherent thrust. While the Philippine Supreme Court has always looked to precedents on this subject laid down by the United States Supreme Court, it has not kept abreast of recent developments in United States federal *habeas corpus* legal lore as it has evidently ceased to look at the American precedents closely enough. But the point of this paper is to invite a closer look at these later developments in American federal statutory and case law for illumination. These developments have, after all, crystallized after mature, exhaustive and intensive consideration of a complex of historical, empirical and philosophical factors.

Conviction of crime is a very grave matter. It may entail the loss of life or liberty. That its consequences are irreversible impresses it with even more seriousness. The toll may not be on the convict alone but on his loved ones as well. *Habeas corpus* review of the judgment of conviction offers the last chance for reversal or modification. Professor Bator captured the problem very well in the following words:

> The problem of finality in criminal law raises acute tensions in our society. This should not, of course, occasion surprise. For the processes of the criminal law are, after all, purposefully and designedly awful. Through them society purports to bring citizens to the bar of judgment for condemnation, and those condemned become for that reason subject to governmental power exercised in its acutest forms: loss of property, of liberty, even life. No wonder that our instinct is that we must be sure before we proceed to the end, that we will not write an irrevocable *finis* on the page until we are somehow truly satisfied that justice has been done.
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> x x x

> Our fear (and, in some, conviction) that the entire apparatus of the criminal process may itself be fundamentally unjust makes us peculiarly unwilling to accept the notion that the end has finally come in a particular case; the impulse is to make doubly, triply, even ultimately sure that the particular judgment is just, that the facts as found are "true" and the law applied "correct."
>
> It is thus not surprising to find that turbulence surrounds the doctrines of the criminal law which determine when, if ever, a judgment of conviction assumes finality.[1]

On what grounds may a final judgment of conviction still be reviewed by our courts? What is the scope of any such post-conviction review? These are the basic questions sought to be addressed by this article.

This article makes a comprehensive review and analysis of all Philippine Supreme Court decisions on *habeas corpus* as a mode of post-conviction review. It deals purely with doctrinal issues, identifying and reconciling legal rules governing *habeas* review and adjudication involving convicted felons. Comparison and contrast with United States federal *habeas* law and practice is also undertaken. Although *habeas corpus* is also available in the various States of the United States as a mode of post-conviction review, the State law and practice here is not considered.

The exclusive focus of this article is on *habeas corpus* as a mode of collateral attack at a final judgment of conviction. Excluded therefore from its scope are cases of *habeas corpus* as a means of relief from deprivations of freedom or custody which do not derive from a judgment of conviction in a criminal case. Nor does this article consider the availability of *habeas* relief to those who have not yet been convicted by final judgment of a court.

Therefore, excluded from the scope of this article are cases dealing with *habeas corpus*: 1) as a means to effect release from the custody of a private party;[2]

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[1] Paul Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441, 441-443 (1963). But the evils of *habeas* review of final judgments of conviction have also been noted to include: 1) duplication of judicial effort , 2) delay in setting the criminal proceeding at rest, 3) postponed litigation of fact and consequent less reliability in reproducing the facts respecting the post-conviction claim itself and the issue of guilt if the collateral attack succeeds and a retrial is held. *See* Anthony Amsterdam, *Search, Seizure, and Section 2255*, 112 U. PA. L. REV. 378, 383-84 (1964); concurring opinion of Justice Powell in Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).

[2] *See, e.g.*, Balagtas v. Court of Appeals, G.R. No. 109073, October 20, 1999, 317 SCRA 69, for an idea of the range of possible uses of the writ of *habeas corpus* in a Philippine setting. *See* Emmanuel

2) for the release from detention by virtue of an unlawful arrest;[3] 3) for release from confinement by immigration authorities prior to deportation;[4] 4) to question the legality of petitioner's arrest;[5] 5) to effect release from imprisonment for civil contempt;[6] or for contempt of Congress;[7] 6) as a means of challenging duration of confinement as affected by prisoner's good–conduct credits;[8] 7) as a means of attack on orders for commitment to mental institutions;[9] and 8) aliens' means of challenging exclusion and deportation orders.[10]

II. HISTORY AND IMPORTANCE OF THE WRIT

The writ of *habeas corpus* is an ancient writ whose importance has been well recognized. The landmark case of *Fay v. Noia*[11] gave this brief history[12] of the writ and its importance:

> We do well to bear in mind the extraordinary prestige of the Great Writ, *habeas corpus ad subjiciendum*, in Anglo-American jurisprudence: "the most celebrated writ in the English law." 3 Blackstone Commentaries 129. It is "a writ antecedent to statute, and throwing its root deep into the genius of our common law * * *. It is perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial antiquity, an instance of its use occurring in the thirty-third year of Edward I." Secretary of State for Home Affairs v. O'Brien, [1923] A.C. 603, 609 (H.L.). Received into our own law in the colonial period, given explicit recognition in the Federal Constitution, Art. I, § 9, cl. 2, incorporated in the first grant of federal court jurisdiction, Act of September 24, 1789, c. 20 § 14, 1 Stat. 81-82, *habeas corpus* was early confirmed by Chief Justice John Marshall to be a "great constitutional privilege." Ex parte Bollman and Swartwout, 4 Cranch 75, 95, 2 L.Ed. 554.

Fernando, *The Enduring Contributions of Justice Malcolm to the Law on Habeas Corpus*, 47 PHIL. L. J. 417 (1972).

[3] *See, e.g.*, Matsura v. Director of Prisons, 77 Phil. 1050 (1947).

[4] *See, e.g.*, Lao Tang Ban v. Fabre, 81 Phil. 682 (1948).

[5] *See, e.g.*, Bernate v. Court of Appeals, G.R. No. 107741, October 18, 1996, 263 SCRA 323 (2nd Div.).

[6] *See, e.g.*, Harden v. Director of Prisons, 81 Phil. 741 (1948).

[7] *See, e.g.*, Lopez v. de los Reyes, 55 Phil. 170 (1930).

[8] *See* Preiser v. Rodriguez, 411 U.S. 475, 93 S. Ct. 1827, 36 L.Ed.2d 439 (1973).

[9] *See* Note, *Developments in the Law – Civil Commitment of the Mentally Ill*, 87 HARV. L. REV. 1190 (1970).

[10] *See, e.g.*, Brownell v. Tom We Shung, 352 U.S. 180, 77 S.Ct. 252, I L.Ed.2d 225 (1956).

[11] 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed. 2d 837 (1963).

[12] A more detailed history of the writ may be found in George F. Longsdorf, *Habeas Corpus: A Protean Writ and Remedy*, 8 F.R.D. 179 (1948). *See, also*, Note, *The Freedom Writ – The Expanding Use of Federal Habeas Corpus*, 61 HARV. L. REV. 657 (1948); Max Rosenn, *The Great Writ – A Reflection of Societal Change*, 44 OHIO S.L.J. 337 (1983).

> Only two Terms ago this Court had occasion to reaffirm the high place of the writ in our jurisprudence; "We repeat what has been so truly said of the federal writ: "there is no higher duty than to maintain it unimpaired," Bowen v. Johnston, 1939, 306 U.S. 19, 26, 59 S.Ct. 442, 446, 83 L. Ed. 455, and unsuspended, save only in the cases specified in our Constitution." Smith v. Benett, 365 U.S. 708, 713, 81 S.Ct. 895, 898, 6 L.Ed.2d 39.[13]
>
> These are not extravagant expressions. Behind them may be discerned the unceasing contest between personal liberty and government oppression. It is no accident that *habeas corpus* has time and again played a central role in national crisis, wherein the claims of order and of liberty clash most acutely, not only in England in the seventeenth century, but also in America from our very beginnings, and today. Although in form the Great Writ is simply a mode of procedure, its history is inextricably intertwined with the growth of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment can not be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release. Thus there is nothing novel in the fact that today *habeas corpus* in the federal courts provides a mode for the redress of denials of due process of law. Vindication of due process is precisely its historic office.

The writ is a judicial order directing that a person be brought to a tribunal at a certain time and place. The term, *habeas corpus*, is derived from Latin, meaning that the court would "have the body." Originally a form of *mesne* process, by the mid-fourteenth century, the writ had come to be used as an independent proceeding designed to challenge illegal detention.[14]

The availability of the writ was first constitutionally guaranteed in the Philippines by the Philippine Bill of 1902.[15] In the first volume of Philippine Reports we already see a case[16] involving an original application in the Supreme Court for the writ of *habeas corpus*. The availability of the writ continues to be guaranteed in our present Constitution which states: "The privilege of the writ of

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[13] *Fay v. Noia*, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed. 2d 837 (1963).

[14] YALE KAMISAR, WAYNE LAFAVE AND JEROLD ISRAEL, MODERN CRIMINAL PROCEDURE: CASES, COMMENTS AND QUESTIONS 1625 (1984) [hereinafter, KAMISAR].

[15] JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 469 (1996).

[16] *In re* Prautch, 1 Phil. 132 (1902).

habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it."[17]

The writ has been recognized as serving "to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints."[18] For this reason, extreme care has been urged for the processing and adjudication of petitions for the writ of *habeas corpus* "for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law."[19] Over time, the writ "has become primarily a means by which one court of general jurisdiction exercises post-conviction review over the judgment of another court of like authority."[20]

III. PRELIMINARY CONSIDERATIONS: STANDING, JURISDICTION, VENUE AND FORM OF THE PETITION

A. Who has standing to file petition?

The procedure governing the processing and adjudication of petitions for writs of *habeas corpus* in our jurisdiction is governed by Rule 102 of our Rules of Court. Section 3 of this Rule merely states that the petition may be "signed and verified either by the party for whose relief it is intended or by some person on his behalf", and this is the same rule under the American federal *habeas corpus* statute.[21] Therefore, even a common-law wife of a detained person has been held to have personality to institute a *habeas corpus* petition as she falls within the purview of the term "some person" under Section 3, which means any person who has a legally justified interest in the freedom of the person whose liberty is restrained or who shows some authorization to make the application.[22] But if the application for the writ is made in the prisoner's behalf by a third person but the prisoner repudiates the action taken, the writ will be denied.[23] After all, a *habeas corpus* proceeding is not a suit between private parties as it is not even a suit in the technical sense since there is no real plaintiff and defendant, the person restrained being the central figure in the proceeding for whose benefit it is instituted.[24] It is

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[17] CONST., art. III, sec. 15.
[18] *See* Peyton v. Rowe, 391 U.S. 54, 65-67, 87 S.Ct. 1949, 1555, 23 L.Ed. 426 (1968).
[19] Harris v. Nelson, 394 U.S. 286, 89 S.Ct. 1082, 22 L.Ed.2d 281 (1969).
[20] Dallin H. Oaks, *Legal History in the High Court – Habeas Corpus*, 64 MICH. L. REV. 451 (1966)
[21] 28 U.S.C. §§ 2241-2245.
[22] Velasco v. Court of Appeals, G.R. No. 118644, July 7, 1995, 245 SCRA 677, 684 (1st Div.).
[23] Kelly v. Director of Prisons, 44 Phil. 623 (1923).
[24] Alimpoos v. Court of Appeals, G.R. No. 27331, July 30, 1981, 106 SCRA 159, 170 (1st Div.).

really a suit by the State at the instance of an individual, and is analogized to a proceeding *in rem* for the purpose of fixing the status of a person.[25]

B. Jurisdiction and Venue

The writ of *habeas corpus* may be granted by the Supreme Court or any member thereof or a Regional Trial Court or a Judge hereof.[26] In the absence of all the Regional Trial Judges in a province or city, any Metropolitan Trial Judge, Municipal Trial Judge, Municipal Circuit Trial Judge may hear and decide *habeas corpus* petitions,[27] but Regional Trial Courts may issue writs of *habeas corpus* enforceable only in their respective regions.[28] Since the relief sought is the release from custody, the petition should be filed in that court having jurisdiction over the official holding the petitioner in custody (e.g., the prison warden), rather than the court of conviction.[29] For the court therefore to have territorial jurisdiction all that is needed is that the person who holds petitioner in what is claimed to be a lawful custody, rather than the prisoner who seeks relief, is within the court's territorial jurisdiction.[30] In the United States, however, the federal *habeas corpus* statute makes certain qualifications such as that which require that a collateral attack on a federal sentence be brought in the sentencing court rather than in the district where the prisoner is confined.[31] This qualification may be worthy of consideration for adoption in our jurisdiction if only to avoid the unseemly situation of, say, having a court review on *habeas corpus* proceedings a judgment of conviction rendered by another court of coordinate and co-equal rank.[32]

C. Form of Petition

All that is required of a *habeas corpus* petition is that it be "signed and verified either by the party for whose relief it is intended, or by some person on his behalf," and to set for forth the facts concerning the petitioner's detention.[33]

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[25] FORREST G. FERRIS, THE LAW OF EXTRAORDINARY REMEDIES 28 (1926).

[26] RULES OF COURT, Rule 102, sec. 2.

[27] Batas Blg. 129 (1980), sec. 35. This is also known as the Judiciary Reorganization Act of 1980.

[28] Batas Blg. 129 (1980), sec. 21 (1); Rafael, Sr. v. Puno, G.R. No. 44861, March 29, 1977, 76 SCRA 115 (2nd Div.). Compare 28 U.S.C. § 2241 (a), (b) and (d).

[29] KAMISAR, *supra* note 13, at 1624.

[30] Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 93 S.Ct. 1123, 35 L.Ed. 2d 443 (1973).

[31] 28 U.S.C. § 2255.

[32] Such a review by the *habeas* court is in effect a review by a co-equal and a co-ordinate court. *See* Republic v. Yatco, G.R. No. 17924, October 30, 1962, 6 SCRA 352, 356.

[33] RULES OF COURT, Rule 102, sec. 3, which is substantially similar to 28 U.S.C. § 2242.

Considering the importance of the subject matter of the petition, its form is a peripheral consideration. Thus, a motion for modification of sentence was treated as a petition for *habeas corpus*[34] so that a movant-convict was ordered released from confinement where, by virtue of the retroactive application to her of a new law, she was found to have already served her lawful sentence. Even a letter-petition will do.[35]

IV. BASIS AND PRECONDITIONS FOR ISSUANCE OF THE WRIT

A. The "Custody" Requirement

The writ of *habeas corpus* applies "to all cases of illegal confinement or detention,"[36] it therefore being required that there be a person "in custody."[37] On evaluating a petition for *habeas corpus*, the court therefore must first inquire into whether the petitioner is restrained of his liberty.

But when a person is "in custody" or is sufficiently deprived of, or restricted in, his liberty is not always clear. In a 1935 case[38] our Supreme Court ruled that the writ of *habeas corpus* is not available to one who had been released on bail because actual, physical restraint, not merely moral restraint, is required. A nominal restraint is of course not sufficient.[39] Still, in the much earlier and famous case of *Villavicencio v. Lukban*[40] our Supreme Court broadly stated: "Any restraint which will preclude freedom of action is sufficient."

The aforequoted statement in *Villavicencio v. Lukban* preceded what the United States Supreme Court had to say on "custody" years later. To the United States Supreme Court, the concept of "custody" spans a wide swath:

> It [custody] includes a person who was incarcerated at the time the writ was filed, even though unconditionally discharged prior to the point that the *habeas* court rules on his petition. *Carafas v. LaVallee*, 391 U.S. 234, 88 S.Ct.

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[34] *See* People v. Caco, G.R. Nos. 94994-94995, March 7, 1997, 269 SCRA 271; People v. Labriaga, G.R. No. 92418, November 20, 1995, 250 SCRA 163.

[35] *See* Angeles v. Director of New Bilibid Prisons, G.R. No. 117568, January 4, 1995, 240 SCRA 49 (*en banc*). A fatally defective *habeas* petition will not discourage our courts from entertaining it. *See, e.g.*, Ganawan v. Quillen, 42 Phil. 805 (1922).

[36] RULES OF COURT, Rule 102, sec. 1.

[37] 28 U.S.C. §§ 2241 (c), 2254 and 2255.

[38] Gonzales v. Viola, 61 Phil. 824 (1935).

[39] Zagala v. Ilastre, 48 Phil. 282 (1925); Zacarias v. Cruz, G.R. No. 25899, November 29, 1969, 30 SCRA 728.

[40] 39 Phil. 778, 790 (1919).

> 1556, 20 L. Ed.2d 554 (1968). The custody requirement also is met by a prisoner currently incarcerated under an unchallenged conviction who is attacking a second conviction of the same jurisdiction that will provide the future portion of his consecutive sentence or attacking a separately imposed second conviction and future sentence of another jurisdiction which has filed a detainer with the jurisdiction of current incarceration. *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 93 S.Ct. 1123, 35 L.Ed.2d 443 (1973). On the other hand, where a sentence is unconditionally and fully expired, the potential for collateral consequences (e.g., enhancement of any sentence for any subsequent crime) will not in itself establish custody. *Maleng v. Cook*, 490 U.S. 488, 109 S.Ct. 1923, 104 L.Ed.2d 540 (1989)."[41]

The ruling therefore in *Villaviciencio* that a person released on bail is not eligible to file a *habeas corpus* petition, may now therefore have to be re-examined. Witness such analytical dissection of the term "custody" as was made by the United States Supreme Court in *Hensley v. Municipal Court*.[42] The *habeas corpus* petitioner in that case was convicted by a California state court but was released on his own recognizance. While exhausting all his available state court remedies and after filing his petition for federal *habeas corpus*, petitioner was enlarged on his own recognizance. Under the California statute, release of the accused on his own recognizance is conditioned on his written agreement to appear at all times and places as ordered by the court and that the court may revoke an order of release at any time and subject him to re-arrest. These are not unlike the conditions of release on bail under our own law, which conditions include having to "appear before the proper court whenever required by the court or these Rules."[43] The Court held that such conditions as were imposed on petitioner as the price of his release constitute "custody" as that term is used in the *habeas corpus* statute. Expostulating, the United States Supreme Court held:

> The custody requirement of the *habeas corpus* statute is designed to preserve the writ of *habeas corpus* as a remedy for severe restraints on individual liberty. Since *habeas corpus* is an extraordinary remedy whose operation is to a large extent uninhibited by traditional rules of finality and federalism, its use has been limited to cases of special urgency, leaving more conventional remedies for cases in which the restraints on liberty are neither severe nor immediate. Applying that principle, we can only conclude that petitioner is in custody for purposes of the *habeas corpus* statute. First, he is subject to restraints "not shared by the public generally," Jones v. Cunningham, supra, 371 U.S. at 240, 83 S.Ct. at 376, that is, the obligation to appear "at all times and places as

[41] KAMISAR, *supra* note 13, at 1629.
[42] 411 U.S. 345, 93 S.Ct. 1571, 36 L.Ed 2d. 294 (1973).
[43] RULES OF COURT, Rule 114, sec. 2(b).

> ordered" by "[a]ny court or magistrate of competent jurisdiction." Cal.Penal Code §§ 1318.4(a), 1318.4(c). He cannot come and go as he pleases. His freedom of movement rests in the hands of state judicial officers, who may demand his presence at any time and without a moment's notice. Disobedience is itself a criminal offense. The restraint on his liberty is surely no less severe than the conditions imposed on the unattached reserve officer whom we held to be "in custody" in *Strait v. Laird*, supra.
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> Second, petitioner remains at large only by the grace of a stay entered first by the state trial court and then extended by two Justices of this Court. The State has emphatically indicated its determination to put him behind bars, and the State has taken every possible step to secure that result. His incarceration is not, in other words, a speculative possibility that depends on a number of contingencies over which he has no control. This is not a case where the unfolding of events may render the entire controversy academic. The petitioner has been forced to fend off the State authorities by means of a stay, and those authorities retain the determination and the power to seize him as soon as the obstacle of the stay is removed. The need to keep the stay in force is itself an unusual and substantial impairment of his liberty.

But the dissent by Justice Rehnquist is pointedly persuasive:

> Petitioner has been free on his own recognizance since his conviction and the imposition of sentence in the summer of 1969. The California statute authorizing his release imposes no territorial or supervisory limitations and he has been subject to none. He has not been required to post any security for his appearance. At the time of the filing of his federal *habeas* petition, the only conceivable restraint on him was that at the time of the expiration of the stay granted by the state court, petitioner would have had to surrender himself to the custody of the sheriff. The record shows that for the three and one-half years since his conviction petitioner has utilized his freedom to travel both within and without the State of California for business purposes.
>
> Petitioner was under no greater restriction than one who had been subpoenaed to testify in court as a witness. This is simply not "custody" in any known sense of the word, and it surely is not what was meant by Congress when it enacted 28 U.S.C. § 2241.

The degree of confinement, or the severity of the deprivation of liberty, is a matter of judicial appreciation. Our Supreme Court has denied *habeas* relief to one who merely sought to be restored to his former status as a prisoner of war and therefore interned and not confined.[44]

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[44] Yamashite v. Styer, 75 Phil. 563, 571 (1945).

B. Effect of Availability of other Collateral Remedies

Habeas corpus is one means of collaterally attacking a judgment of conviction after all opportunities for appellate review have been exhausted. While there is some intimation in a Philippine case[45] that where the error which vitiates the judgment of conviction is correctible on *certiorari*, *habeas corpus* should not be available, the clearer and preponderant thrust of recent authority is to the effect that the availability of *certiorari* is not preemptive of *habeas corpus* relief. While *habeas corpus* is not a substitute for appeal nor does it function as a writ of error, the availability of other remedies does not undermine the availability of *habeas corpus*.

> It is the general rule that *Habeas* should not be resorted to when there is another remedy available.
>
> As a general rule, a writ of *habeas corpus* will not be granted where relief may be had or could have been procured by resort to another general remedy, such as appeal or writ of error. But the existence of another remedy does not necessarily preclude a resort to the writ of *habeas corpus* to obtain relief from illegal detention, especially where the other remedy is deemed not to be as effective a that of *habeas corpus*."
>
> Time and again, it has been explained that *Habeas Corpus* cannot function as a writ of error".[46]

While both *certiorari* and *habeas corpus* involve a collateral attack on a court's jurisdiction, these remedies perform different functions. It is said that *certiorari* reaches the record but not the body, whereas *habeas corpus* reaches the body but not the record:[47]

> It does not, however, follow that if *certiorari* is available to Larkins, an application for a writ of *habeas corpus* will absolutely be barred. While ordinarily, the writ of *habeas corpus* will not be granted when there is an adequate remedy by writ of error or appeal or by writ of *certiorari*, it may, nevertheless, be available in exceptional cases, for the writ should not be considered subservient to procedural limitations which glorify form over substance. It must kept in mind that although the question most often considered in both *habeas corpus* and *certiorari* proceedings is whether an inferior court has exceeded its jurisdiction, the former involves a collateral

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[45] Domingo v. Director of Prisons, 77 Phil. 1053, 1056 (1947).
[46] Alimpoos v. Court of Appeals, G.R. No. 27331, July 30, 1981, 106 SCRA 159, 174 (1st Div.).
[47] Velasco v. Court of Appeals, G.R. No. 118644, July 7, 1995, 245 SCRA 677, 684 (1st Div.).

> attack on the judgment and "reaches the body but not the record," while the latter assails directly the judgment and "reaches the record but not the body".

Yet it is possible for the writs of *habeas corpus* and *certiorari* to be ancillary to each other where necessary to give effect to the supervisory powers of the higher courts as where a person has been detained upon an unlawfully issued warrant of arrest.[48]

The point has long being made by our Supreme Court that the writ of *habeas corpus* "may issue even if another remedy which is less effective may be availed of by the defendant."[49] But, to be sure, the writ of *habeas corpus* is well understood to be unavailable when an appeal is still available,[50] so is *habeas corpus* relief barred by the availability of the remedy of re-opening of the case.[51] These rulings make plain sense because the judgment in such cases is not yet a final judgment.

In *Santiago v. Alikpala*[52] our Supreme Court issued the writs of *certiorari* and prohibition to release a person convicted by a court-martial which was held to have been illegally convened and therefore to have convicted the accused without procedural due process. The Court even went further to suggest[53] that *habeas corpus* may go along with *certiorari* and *mandamus*. But where the convict's appeal was erroneously disallowed, his proper remedy is *mandamus*, and not *certiorari*, to compel the allowance of the appeal.[54]

The requirement for federal *habeas corpus* relief[55] that there be prior exhaustion of State remedies does not apply in our jurisdiction for the simple reason that the Philippines does not have a federal system as that in the United States. The requirement of prior exhaustion of State remedies is a function of

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[48] *See* Galvez v. Court of Appeals, G.R. No. 114046, October 24, 1994, 237 SCRA 685, 712-713 (2nd Div.).

[49] Chavez v. Court of Appeals, G.R. No. 29169, August 19, 1968, 24 SCRA 663, 684.

[50] *See, e.g.*, Cowper v. Dade, 29 Phil. 222 (1915); Gonzalez v. Wolfe, 12 Phil.436 (1903); Yambot v. McMicking, 10 Phil. 95 (1908). *See*, also, Collins v. Wolfe, 4 Phil. 534 (1905).

[51] Domingo v. Director of Prisons, 77 Phil. 1053, 1056 (1947).

[52] G.R. No. 25133, Sept. 28, 1968, 25 SCRA 356.

[53] *Citing* Chavez v. Court of Appeals, G.R. No. 29169, August 19, 24 SCRA 663, where the petition, which was granted, was filed originally with the Supreme Court and was for *mandamus* and *habeas corpus*. But *see* Talabon v. Iloilo Provincial Warden, 78 Phil. 599, 606, 609 (1947), to the effect that the availability of *mandamus* bars *habeas corpus* relief.

[54] Gonzales v. Wolfe, 12 Phil. 436 (1909); Trinidad v. Sweeney, 4 Phil. 531 (1905)

[55] 28 U.S.C. § 2254 (b) (1).

comity and is by way of accommodation peculiar to the federal structure of the American system.[56]

V. RELITIGATION OF FACTUAL ISSUES

The grounds for the issuance of the writ of *habeas corpus* are broadly stated both under our law and under United States law. Our law states that the "writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto."[57] Federal *habeas corpus*, on the other hand, is available to anyone who is "in custody in violation of the Constitution or laws or treaties of the United States."[58] This language is all-encompassing. Narrowed down, however, to the use of the writ as an avenue for challenging a deprivation of liberty or of being held in custody under and by virtue of a final judgment of conviction, the focus of inquiry is as to the grounds by which such a judgment may be challenged or overturned so as to effect the prisoner's release. The writ therefore serves as a mode of review of a judgment of conviction which has already become final and gone beyond reversal or modification on appeal. It is a post-judgment mode of review and, as it is by a court independent of the court which rendered the judgment of conviction it is also a mode of collateral review.

Given the finality of the judgment of conviction which is to be reviewed on *habeas corpus*, the threshold consideration on this review is the extent to which *res judicata* effect will be given to the judgment of conviction. Quite apart, therefore, from a consideration of the grounds for *habeas corpus* review is the question of what matters which have already been passed upon and adjudicated, or which could have been raised and adjudicated, in the proceeding which led to the judgment of conviction, may be re-litigated in the proceeding for *habeas corpus*.[59] *Habeas corpus* review of a judgment of conviction reflects a tension between the need on the one hand to respect the finality of the judgment of conviction, and the need on the other hand to assure that no person is unjustly imprisoned or deprived of his liberty. Notably, English courts have refused to allow

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[56] Preiser v. Rodriguez, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973), Picard v. Conner, 404 U.S. 270, 92 S.Ct. 509, 30 L.Ed.2d 438 (1971).

[57] RULES OF COURT, Rule 102, sec. 1.

[58] 298 U.S.C. 2241 (c) (3).

[59] Compare RULES OF COURT, Rule 39, sec. 47 (b).

habeas corpus to develop as a post-conviction remedy because of "undoubtedly a strong desire to preserve finality in the criminal process."[60]

The extent to which our Supreme Court will concede preclusive effect to a judgment of conviction has not been indubitably established in this jurisdiction. It would appear, however, that our Supreme Court is disinclined to allow a court on *habeas corpus* to review the appreciation of facts undertaken by the court as a basis for its judgment of conviction. Our courts will not review, on *habeas*, the evidence for its sufficiency to support the conviction.[61] Else, "the correctness of a judgment of conviction in a criminal case will nearly always be determinable by a writ of *habeas corpus*."[62] This line of thinking consists with the oft-repeated proposition that mere errors of fact in the judgment of conviction are to be corrected on appeal and not on *habeas corpus*.[63]

Where, however, the basis for attack at the judgment of conviction is founded on an alleged denial of a Constitutional right, inquiry into the factual basis of the alleged denial can be made on *habeas corpus*. This qualification was evident in *Chavez v. Court of Appeals*,[64] a Philippine case. In that case, the accused was charged together with several others with qualified theft of a motor vehicle. At the trial, he was called by the prosecution as the first witness to testify for the People. Over his objection and protestation based on his privilege against self-incrimination, the trial court directed him to take the witness stand. His testimony, obtained by leading questions, narrated the theft in which he admittedly participated. By his incriminating admissions, the court convicted him. His attempt to appeal the conviction to the Court of Appeals was frustrated because his appeal was dismissed for failure to file brief. On *certiorari* (to strike down the resolution dismissing his appeal), *mandamus* (to direct the Court of Appeals to forward his appeal to the Supreme Court) and *habeas corpus*, the Court reviewed the transcript of the trial court proceedings containing the dialogue between the fiscal and defense counsel which led to the accused's having to take the witness stand. The Court then made the following factual assessment of the evidence as borne out by the transcript:

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[60] ROBERT SHARPE, THE LAW OF HABEAS CORPUS 145 (2nd ed. 1989).

[61] Ngo Yao Tit v. Sheriff of Manila, 27 Phil. 378 (1914). But United States federal courts will, even on *certiorari* against state court judgments of conviction, unhesitatingly review the supporting evidence. *See*, e.g., Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed.2d 654 (1960).

[62] *Id.* at 383.

[63] Trono Felipe v. Director of Prisons, 24 Phil. 121 (1913).

[64] G.R. No. 29169, August 19, 24 SCRA 663.

> [W]e have no hesitancy in saying that petitioner was forced to testify to incriminate himself, in full breach of his constitutional right to remain silent. It cannot be said now that he has waived his right. He did not volunteer to take the stand and in his own defense; he did not offer himself as a witness; on the contrary, he claimed the right upon being called to testify. If petitioner nevertheless answered the questions inspite of his fear of being accused of perjury or being put under contempt, this circumstance cannot be counted against him. His testimony is not of his own choice. To him it was a case of compelled submission. He was a cowed participant in proceedings before a judge who possessed the power to put him under contempt had he chosen to remain silent. Nor could he escape testifying. The court made it abundantly clear that his testimony at least on direct examination would be taken right then and thereon the first day of the trial.
>
> It matters not that, after all efforts to stave off petitioner's taking the stand became fruitless, no objections to questions propounded to him were made. Here involved is not a mere question of self-incrimination. It is a defendant's constitutional immunity from being called to testify against himself. And the objection made at the beginning is a continuing one.
>
> There is therefore no waiver of the privilege. "To be effective, a waiver must be certain and *unequivocal*, and *intelligently*, *understandably*, and *willingly* made; such waiver follows only where *liberty of choice* has been fully accorded. After a claim a witness cannot properly be held to have waived his privilege on vague and uncertain evidence" The teaching in *Johnson v. Zerbst* is this: "It has been pointed out that "courts indulge every reasonable presumption against waiver" of fundamental constitutional rights and that we" do not presume acquiescence in the loss of fundamental rights." A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. *Renuntiatio non praesumitur.*
>
> The foregoing guidelines, juxtaposed with the circumstances of the case heretofore adverted to, make waiver a shaky defense. It cannot stand. If, by his own admission, defendant proved his guilt, still, his original claim remains valid. For the privilege, we say again, is a rampart that gives protection – even to the guilty.[65]

Clearly, therefore, the court in *Chavez* re-examined the proceedings in the trial court to ascertain whether the accused had truly waived his right against self-incrimination. Upon this re-examination, it determined that there was no such waiver. And so concluding, the Court necessarily held itself as not bound by the factual finding of the trial court that there was such a valid waiver.

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[65] *Id.* at 682-683.

In the case of federal *habeas* review of a State court judgment of conviction, the federal *habeas corpus* statute expressly authorizes, as it defines the parameters of, *de novo* review of the facts claimed to render the detention unlawful. In other words, the federal *habeas* court may review the findings of fact which were made by the convicting state court. The federal statutory provision is found in the following provisions of 28 U.S.C § 2254:

> (d) In any proceeding instituted in a Federal court by an application for a writ of *habeas corpus* by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit,
>
> (1) that the merits of the factual dispute were not resolved in the State court hearing;
>
> (2) that the factfinding procedure employed by the state court was not adequate to afford a full and fair hearing;
>
> (3) that the material facts were not adequately developed at the State court hearing;
>
> (4) that the State court lacked jurisdiction of the subject matter or over the person of the applicant in the State court proceeding;
>
> (5) that the applicant was an indigent and the State court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceeding;
>
> (6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or
>
> (7) that the applicant was otherwise denied due process of law in the State court proceeding;
>
> (8) or unless that part of the record of the State court proceeding in which the determination of such factual issue was made, pertinent to a determination of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the Federal court on a consideration of such

> part of the record as a whole concludes that such factual determination is not fairly supported by the record;
>
> And in an evidentiary hearing in the proceeding in the Federal court, when due proof of such factual determination has been made, unless the existence of one or more of the circumstances respectively set forth in paragraphs numbered (1) to (7), inclusive, is shown by the applicant, otherwise appears, or is admitted by the respondent, or unless the court concludes pursuant to the provisions of paragraph numbered (8) that the record in the State court proceeding, considered as a whole, does not fairly support such factual determination, the burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the State court was erroneous.
>
> (e) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.
>
> (f) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

The foregoing statutory statement of standards for *de novo* factual review is a codification of the rulings in *Townsend v. Sain*.[66] It was stressed in *Townsend* that the power of the *habeas corpus* court to determine the facts *de novo* reflects the common-law understanding and that this power of inquiry is plenary. In *Towsend*, the accused sought *habeas corpus* relief in the federal court against his conviction by an Illinois State court on the ground that his conviction was based on his confession which was a product of coercion. The United States Supreme Court remanded the case to the federal district court for an evidentiary hearing on whether the accused"s confession was indeed coerced.[67]

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[66] 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed. 2d 770 (1963). *See* LaVallee v. Delle Rose, 410 U.S. 690, 93 S.Ct. 1203, 35 L.Ed. 2d 637 (1973).

[67] For a review of the development of this principle of *de novo* factual review, *See* Note, *Developments in the Law – Federal Habeas Corpus*, 83 HARV. L. REV. 1038, 1113-18 (1970).

Review on *habeas corpus* of the evidence urged to support a judgment of conviction is now unquestioned in the United States. Basis for this factual review is the Constitutional proscription against a criminal conviction except upon proof of guilt beyond a reasonable doubt. *Jackson v. Virginia*[68] rationalized the American federal rule in these terms:

> Under 28 U.S.C. 2254, a federal court must entertain a claim by a state prisoner that he or she is being held in "custody in violation of the Constitution or laws or treaties of the United States." Under the Winship decision, it is clear that a state prisoner who alleges that the evidence in support of his state conviction cannot be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt has stated a federal constitutional claim. Thus, assuming that state remedies have been exhausted, see 28 U.S.C. 2254 (b), and that no independent and adequate state ground stands as a bar, see Estelle v. Williams, 425 U.S. 501; Francis v. Henderson, 425 U.S. 536; Wainwright v. Sykes, 433 U.S. 72; Fay v. Noia, 372 U.S. 391, 438, it follows that such a claim is cognizable in a federal *habeas corpus* proceeding. The respondents have argued, nonetheless, that a challenge to the constitutional sufficiency of the evidence should not be entertained by a federal district court under 28 U.S.C. 2254.
>
> In addition to the argument that a Winship standard invites replication of state criminal trials in the guise of 2254 proceedings – an argument that simply fails to recognize that courts can and regularly do gauge the sufficiency of the evidence without intruding into any legitimate domain of the trier of fact – the respondents have urged that any departure from the Thompson test in federal *habeas corpus* proceedings will expand the number of meritless claims brought to the federal courts, will duplicate the work of the state appellate courts, will disserve the societal interest in the finality of state criminal proceedings, and will increase friction between the federal and state judiciaries. In sum, counsel for the State urges that this type of constitutional claim should be deemed to fall within the limit on federal *habeas corpus* jurisdiction identified in Stone v. Powell, 428 U.S. 465, with respect to Fourth Amendment claims. We disagree.
>
> First, the burden that is likely to follow from acceptance of the Winship standard has, we think, been exaggerated. Federal-court challenges to the evidentiary support for state convictions have since Thompson been dealt with under 2254. E.g., Freeman v. Stone, 444 F.2d 113 (CA9); Grieco v. Meachum, 533 F.2d 713 (CA1); Williams v. Peyton, 414 F.2d 776 (CA4). A more stringent standard will expand the contours of this type of claim, but will not create an entirely new class of cases cognizable on federal *habeas corpus*. Furthermore, most meritorious challenges to constitutional sufficiency of the evidence undoubtedly will be recognized in the state courts, and, if the state

[68] 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

courts have fully considered the issue of sufficiency, the task of a federal *habeas* court should not be difficult. Cf. Brown v. Allen, 344 U.S., at 463. 15 And this type of claim can almost always be judged on the written record without need for an evidentiary hearing in the federal court.

Second, the problems of finality and federal-state comity arise whenever a state prisoner invokes the jurisdiction of a federal court to redress an alleged constitutional violation. A *challenge to a state conviction brought on the ground that the evidence cannot fairly be deemed sufficient to have established guilt beyond a reasonable doubt states a federal constitutional claim.* Although state appellate review undoubtedly will serve in the vast majority of cases to vindicate the due process protection that follows from Winship, the same could also be said of the vast majority of other federal constitutional rights that may be implicated in a state criminal trial. It is the occasional abuse that the federal writ of *habeas corpus* stands ready to correct. Brown v. Allen, supra, at 498-501 (opinion of Frankfurter, J.) *

The respondents have argued nonetheless that whenever a person convicted in a state court has been given a "full and fair hearing" in the state system – meaning in this instance state appellate review of the sufficiency of the evidence – further federal inquiry – apart from the possibility of discretionary review by this Court – should be foreclosed. This argument would prove far too much. A judgment by a state appellate court rejecting a challenge to evidentiary sufficiency is of course entitled to deference by the federal courts, as is any judgment affirming a criminal conviction. But Congress in 2254 has selected the federal district courts as precisely the forums that are responsible for determining whether state convictions have been secured in accord with federal constitutional law. The federal *habeas corpus* statute presumes the norm of a fair trial in the state court and adequate state postconviction remedies to redress possible error. See 28 U.S.C. 2254 (b), (d). What it does not presume is that these state proceedings will always be without error in the constitutional sense. The duty of a federal *habeas corpus* court to appraise a claim that constitutional error did not occur – reflecting as it does the belief that the "finality" of a deprivation of liberty through the invocation of the criminal sanction is simply not to be achieved at the expense of a constitutional right – is not one that can be so lightly abjured.

The constitutional issue presented in this case is far different from the kind of issue that was the subject of the Court's decision in Stone v. Powell, supra. The question whether a defendant has been convicted upon inadequate evidence is central to the basic question of guilt or innocence. The constitutional necessity of proof beyond a reasonable doubt is not confined to those defendants who are morally blameless. E. g., Mullaney v. Wilbur, 421 U.S., at 697-698 (requirement of proof beyond a reasonable doubt is not "limit[ed] to those facts which, if not proved, would wholly exonerate" the accused). Under our system of criminal justice even a thief is entitled to

> complain that he has been unconstitutionally convicted and imprisoned as a burglar.
>
> We hold that in a challenge to a state criminal conviction brought under 28 U.S.C. 2254 – if the settled procedural prerequisites for such a claim have otherwise been satisfied – the applicant is entitled to *habeas corpus* relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt.[69] (emphasis supplied)

It may be parenthetically noted here that the greater stress in the United States is on federal *habeas corpus* review of State court convictions because criminal law enforcement is largely a matter of State concern and only minimally within federal authority. Criminal law is mostly State-enacted and federal criminal law is limited.

One should think that the impetus and bias for relitigation on *habeas* review of the factual underpinnings of a final judgment of conviction should be stronger in a Philippine setting than in the American federal situation which has yet to reckon with the semi-sovereign status of the States and the American federal system with a separate and independent judiciary in each State. This may well be the case if the decision of our Supreme Court in the case of *Camasura v.Provost Marshal*[70] is to be any indication.

Camasura had very interesting facts. Camasura was serving sentence in prison under judgments of conviction promulgated in 1942 and 1943 by courts under the Japanese regime. On a petition for *habeas corpus* Camasura challenged the validity of the sentences under which he was being held in prison on the ground, among others, that the procedures which petitioner was made to undergo in those cases were unconstitutional and illegal, he having been compelled to plead guilty by means of intimidation and by brutal torture, including water cure, whipping and hanging. Our Supreme Court found, on the basis of the evidence on record, that Camasura's contentions as to intimidation were true:

> The record offer ample basis in support of petitioner's contention as to the intimidation and tortures which compelled him to plead guilty in the eight occupation cases, after he had previously been acquitted in several previous other cases in which Judges Gervasio Diaz and Arsenio Locsin pronounced that the several confessions upon which the prosecution has relied have been

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[69] *Id.* at 320-324.
[70] 78 Phil. 131 (1947).

> extracted "through duress, intimidation and force" and that petitioner had to sign them to avoid further maltreatments, although he knew that the facts which he was pressed to admit were untrue , Judge Diaz concluding that "It would be shocking to human conscience to inflict serious punishment upon a person, based on his mere confession of doubtful reliability", while Judge Locsin said that "Camasura's confessions were successfully repudiated by him because they were extracted from him through torture, violence and intimidation." It appears that Camasura even had to plead guilty in cases which were burned and not reconstituted and in several others he had to withdraw his appeals to avoid further harm and torture from Strebel, one of the tools employed by the Japanese *kempei* to make more effective their inhumane and terroristic practices.
>
> *The facts proved by petitioner* convince us that the sentences rendered in the eight cases in question are null and void and should not be given any effect.[71]

The foregoing is an unmistakable factual review made on *habeas corpus* of the denial of due process which attended the proceedings which undergirded the final judgments of conviction. There is no difference then in this regard from the American rule as more elaborately defined and regulated by 28 U.S.C. § 2254 (d), (e) and (f). There does not seem to be any urgency in adopting the detailed preconditions for factual review in the American federal statute, which preconditions are really tailored to reflect traditional deference by federal courts to State court judgments.

VI. ISSUES COGNIZABLE ON *HABEAS CORPUS* REVIEW

The statement, couched in very broad terms, in both the Philippine statute and the American federal statute, of the grounds for *habeas corpus* relief suggest the breadth of matters which may relevantly be brought up for consideration on *habeas corpus* review. The Philippine statute affords *habeas corpus* relief to all cases of "illegal confinement or detention," and the American federal statute extends the same relief to prisoners who are "in custody in violation of the Constitution or laws or treaties of the United States." Under both statutes, therefore, the bottomline issue for decision would be the legality of the convict's imprisonment, confinement or deprivation of liberty. The basic issue of legality will of course involve a wide range of issues and sub-issues. The extent to which these issues may overlap with those issues which had already been adjudicated, or which could have been adjudicated, in the proceeding or action which eventuated

[71] *Id.* at 136-37. (emphasis supplied)

in the judgment of conviction, is an inevitable previous question. This is because the *habeas corpus* action is by nature a second, if collateral, action to the first action which produced the judgment of conviction.

Despite the seemingly unlimited scope of possible review by the *habeas* court of the prior judgment of conviction, it has not been seriously urged in either Philippine or American jurisdiction that the scope of *habeas corpus* review is as wide-ranging as the scope of appellate review. In fact, the proposition that the writ of *habeas corpus* does not function as a substitute for an appeal or a writ of error has become a trite truism in both jurisdictions. The articulation of such a generalization does not, however, solve or elucidate any specific concrete situation of an arguably cognizable issue on *habeas* review. The Philippine Supreme Court decisions on the matter rarely, if ever, rise to a level beyond generality. The Philippine lawyer who would like to ascertain what issues he could raise on *habeas corpus*, may therefore profitably refer to the United States Supreme Court decisions for illumination and more precise delineation.

A. Broad Statement of the Philippine Position

A recent and fairly comprehensive statement of the Philippine position on the scope of *habeas corpus* review of a judgment of conviction was made in *Feria v. Court of Appeals*.[72] In that case, Feria, the petitioning convict, had been under detention since May 1981 by reason of his conviction for robbery with homicide by the Regional Trial Court ("RTC") of Manila. Some twelve (12) years later, or in June 1993, as he sought to be transferred from the Manila City Jail to the Bureau of Corrections in Muntinlupa City, it was discovered that the records of his case, including the copy of the judgment, had been lost or destroyed in a fire which burned the Manila City Hall in 1986. So, in October 1994, Feria filed with the Supreme Court a petition for *habeas corpus* against the warden of the Manila City Jail, praying for his discharge from confinement on the ground that his continued detention without any valid judgment is illegal and violative of his constitutional right to due process. The Supreme Court issued the writ and directed that the case be remanded to the RTC-Manila for hearing.

After such hearing, the RTC-Manila dismissed the petition on the ground that there was enough evidence to show that Feria had been convicted by a final judgment in a case the records of which should be reconstituted.

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[72] GR No. 122954, February 15, 2000, 325 SCRA 525.

In affirming the dismissal, the Supreme Court summarized the rulings in this jurisdiction on when a judgment of conviction may be reviewed on *habeas corpus* but it did no more than to re-state the oft-repeated platitude as to the extent to which the judgment of conviction may be overturned on *habeas* review:

> The high prerogative writ of *habeas corpus*, whose origin is traced to antiquity, was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom. It secures to a prisoner the right to *have the cause of his detention examined and determined by a court of justice, and to have the issue ascertained as to whether he is held under lawful authority*. Consequently, the writ may also be availed of where, as a consequence of a judicial proceeding, (a) there has been a deprivation of a constitutional right resulting in the restraint of a person, (b) the court had no jurisdiction to impose the sentence, or (c) an excessive penalty has been imposed, as such sentence is void as to such excess.[73] (emphasis supplied)

Although the Court identified Feria's ground of attack at the lawfulness of his detention as the supposed denial of his constitutional right to due process, it went farther than that and stated that such detention is lawful because it is pursuant to a court judgment although the record of the judgment had been lost and destroyed. The opinion is barren of any indication as to what specifically constituted Feria's claim to deprivation of due process. The unmistakable implication is that since there was a judgment of conviction that settles the matter of denial of due process and the Court would not review any facts antecedent to, or contemporaneous with, the judgment of conviction. From the state of Feria's apparently niggard presentation, one could simply surmise that the Court did not go deeper into the claim of denial of due process because this claim had not been evidentiarily supported. The Court, however, gave ample basis to hope that it would have been hospitable to a claim of denial of due process had there been an evidentiary showing or factual basis of such denial:

> As a general rule, the burden of proving illegal restraint by the respondent rests on the petitioner who attacks such restraint. In other words, where the return is not subject to exception, that is, where it sets forth process which on its face shows good ground for the detention of the prisoner, it is incumbent on petitioner to allege and *prove new matter* that tends to invalidate the apparent effect of such process. If the detention of the prisoner is by reason of lawful public authority, the return is considered *prima facie* evidence of the validity of

[73] *Id.* at 525-526.

> the restraint and the petitioner has the burden of proof to show that the restraint is illegal.[74] (emphasis supplied)

Feria puts forth a broad statement of the Philippine position on the scope of matters which may be taken cognizance of by the court on *habeas corpus* review of a final judgment of conviction. Broad as it is, the statement can hardly serve as a meaningful guide for determining what matters would qualify for re-examination where a judgment of conviction has been attacked on a petition for *habeas corpus*. An analytical and case-by-case examination of Philippine Supreme Court decisions would, this writer suggests, provide more meaningful precedential guidelines.

B. Issue of Whether the Convicting Court is a Competent Court

It may readily be accepted as a given in both Philippine and American jurisdictions that a judgment of conviction rendered by a court which has not been duly constituted and empowered to render such a judgment can be nullified on *habeas corpus*. Jurisdiction, in the sense of power or authority to hear and decide the case with binding force, is an unquestioned integral component of any valid judgment.

The earlier-cited Philippine case of *Santiago v. Alikpala*[75] affords a plain illustration of the situation where the convicting court was devoid of any jurisdiction because it was not duly constituted. In that case, the conviction which was overturned on both *certiorari*, prohibition and *habeas corpus* was by a court-martial which was not legally convened and therefore was without any authority to convict the petitioner. Similarly, it has been ruled that a judgment rendered by a military court which had not been legally constituted is not only voidable but is void and subject to collateral attack on *habeas corpus*,[76] and so was a judgment of conviction by a court-martial which had no jurisdiction to try the accused for the offense vacated on *habeas*.[77]

Support for the foregoing self-evident proposition that a judgment of conviction by a court which lacks the competence to render it may be found in the very language of our own *habeas corpus* statute. Section 4 of Rule 102 relevantly provides:

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[74] *Id.* at 536.
[75] *See* n. 33 and accompanying text.
[76] Ognir v. Director of Prisons, 80 Phil, 401 (1948).
[77] Miquiabas v. Philippines – Ryukus Command, 80 Phil. 262 (1948).

> If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; .... Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment *under lawful judgment.* (emphasis supplied)

There is even a Philippine Supreme Court decision which squarely holds that a finding on the issue of jurisdiction, in terms of competence to pronounce the judgment of conviction, is itself reviewable and reversible on *habeas*. This is the remarkable and early case of *Davis v. Director of Prisons*.[78] This case was an original petition commenced in the Supreme Court for a writ of *habeas corpus*. The petitioner was sentenced first by the Municipal Court for the crime of estafa. On appeal, the Court of First Instance ("CFI") affirmed his conviction and sentenced him to imprisonment for a period of 4 months and 1 day of *arresto mayor*. Finding that the Municipal Court had no jurisdiction over the offense because the penalty provided for the crime charged was for a period longer than 6 months, the Supreme Court reversed the conviction despite the fact that the issue on jurisdiction was raised in and passed upon squarely and frontally by both the Municipal Court and the CFI. Analyzing the issue of jurisdiction of the Municipal Court over the crime of estafa as this jurisdiction was defined under the then governing statutes, our Supreme Court put matters in this way:

> By an examination of section 40 of Act No. 183, and comparing it with section 10 of Act No. 267, it will be seen that while in the original Act (No. 183) the municipal court was given original jurisdiction over the crime of estafa when the punishment did not exceed six months' imprisonment or a fine of P200, in Act No. 267 it is given concurrent jurisdiction with Courts of First Instance of certain crimes, among which are *larceny* and *embezzlement*, where the amount of money or property stolen or embezzled did not exceed the value of P200. While, in our opinion, said Act No. 267 gave the municipal court the right to impose the same penalties which the Court of First Instance might impose for the crimes enumerated in said Act, yet the crime of *estafa* is not enumerated as one of the crimes over which the municipal court has concurrent jurisdiction except, as has been said above, *where the crime of embezzlement constitutes also and at the same time the crime of estafa.* Section 10 of Act No. 267 did not, therefore, give the municipal court concurrent jurisdiction with the Court of First Instance to try persons charged with the crime of *estafa* when the penalty was for more than six months, etc., when said crime did not

[78] 17 Phil. 168 (1910).

also constitute embezzlement. Our conclusion, therefore, must be, if the foregoing reasoning is correct, that the complaint in the present instance not being a complaint for the crime of embezzlement and the punishment for the crime described in the complaint being for more than six months (paragraph 2, article 534), the municipal court did not have jurisdiction to try the defendant, and therefore the judgment was null and void. *The defendant, before the beginning of the trial in the municipal court, objected to the jurisdiction of that court, and after the decision he appealed to the Court of First Instance and there again objected. His objection in the Court of First Instance was to the effect that the municipal court not having had jurisdiction of the cause, the Court of First Instance had no jurisdiction further than to decide the question whether or not the municipal court had jurisdiction of the cause.* We are of the opinion and so hold that this contention of the defendant is tenable. When a case is commenced in a lower court and that court has no jurisdiction over the cause and an objection on that ground is made in such court, and an appeal is taken to a higher court, the higher court acquires no jurisdiction to try the cause further than do decide first whether the lower court really had jurisdiction or not. If the higher court decides correctly that the lower court had jurisdiction of said cause, then it may proceed with the trial of the cause on its merits. *In the present case an objection was duly made in the municipal court to its jurisdiction, as well as in the Court of First Instance.*

Our conclusions are, therefore:

x x x

Ninth. The defendant having objected to the jurisdiction of the municipal court and having appealed to the Court of First Instance upon the ground that the municipal court was without jurisdiction, and there again having objected to the jurisdiction of the court, he was entitled to be heard first upon the question whether or not the municipal had jurisdiction to impose the sentence under the complaint.

Tenth. It being established that the municipal court did not have jurisdiction to impose the penalty under the complaint, then the Court of First Instance had no jurisdiction and the penalty imposed was without authority of law and therefore null.

Eleventh. The proceedings in the municipal court being null and void by virtue of the fact that said court had no jurisdiction, the defendant had a right, if the authorities deemed it advisable to prosecute him, to be brought into the Court of First Instance by the usual and ordinary procedure adopted by the law. On his appeal, under proper objection to the jurisdiction, he had a right to have the question decided whether or not the municipal court had jurisdiction.

> Therefore and for all of the foregoing reasons, it is the judgment of this court that the defendant's petition should be allowed and that he should be at once set at liberty.[79]

Consistently with the foregoing decisional thrust that the issue of jurisdiction in terms of competence to pronounce the judgment is wide open to review on *habeas*, is the rule that the issue of venue may also be similarly reviewed. *Parulan v. Director of Prisons*[80] tangentially confirms this view. As in *Davis*, what was involved in *Parulan* was an original petition in the Supreme Court for *habeas corpus*. The petitioner-convict, while serving sentence and confined to the military barracks of Fort Bonifacio, Makati, Rizal, escaped but was recaptured in Manila. He was prosecuted and convicted by the CFI-Manila for evasion of service of sentence. On *habeas*, the issue was whether the venue of the prosecution for evasion of service of sentence was properly placed in Manila. Ruling in the affirmative on this issue on the reasoning that evasion of service is a continuing offense which is committed as the prisoner moves from his place of confinement to another and from place to place, the Court hypothesized that if the venue were wrong then the court would not have had jurisdiction and *habeas* relief would have been in order:

> Assuming the correctness of the facts as alleged in the petition, and on the basis thereof, we shall proceed to discuss the merits of the case regarding the validity and legality of the decision sentencing the petitioner to a prison term for the crime of evasion of sentence.
>
> Settled is the rule that for deprivation of any fundamental or constitutional rights, lack of jurisdiction of the court to impose the sentence, or excessive penalty affords grounds for relief by *habeas corpus*.
>
> The issue, therefore, as posed in the petition is: Was the Court of First Instance of Manila with jurisdiction to try and decide the case and to impose the sentence upon the petitioner, for the offense with which he was charged – evasion of service of sentence?[81]

C. Issue of Correctness of Penalty Imposed

There is less clarity and consistency in the Philippine position on the extent to which the court on *habeas corpus* review may re-examine, correct or

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[79] *Id.* at 172-76.
[80] G.R. No. 28519, February 17, 1968, 22 SCRA 638.
[81] *Id.* at 640.

modify the penalty imposed in the judgment of conviction. This area is suffused with subtlety and since errors in the appreciation of the correctly applicable law may shade over to jurisdictional errors fine line-drawing becomes inevitable. The *Pomeroy* case[82] defined the instinctive and almost Pavlovian resistance of our Supreme Court to making the writ of *habeas corpus* available to correct an error of the sentencing court in applying the governing law to its estimate of the facts of the case.

The convicts in *Pomeroy* were William Pomeroy and his wife Celia Mariano. They were both convicted by the CFI-Manila of the complex crime of rebellion with murder and robbery committed in pursuance of the rebellion and sentenced to *reclusion perpetua*. Invoking the decisions of the Supreme Court promulgated after their conviction declaring that acts of violence committed in pursuance of rebellion did not give rise to a complex crime but only to simple rebellion punishable by *prision mayor* and a fine of not more than P20,000, the Pomeroys argued that they should be released from prison because they had already served the maximum imposable penalty under these later Supreme Court decisions. The Court denied the Pomeroys' *habeas corpus* petition on its reasoning that the recent Supreme Court decisions do not apply retroactively to their benefit. But the Court went on to hypothesize that even if these recent rulings on rebellion not capable of being complexed with other crimes, were to apply to the Pomeroys still their conviction under the old rulings could not be modified or adjusted on *habeas corpus* because any errors in this regard were not jurisdictional errors. Betraying lack of depth, the Court's reasoning went as follows:

> It is thus apparent that it cannot be properly said that the sentence meted out to the applicants Pomeroy was erroneous and beyond the court's jurisdiction. But, assuming that it was error for the Court to consider that the murders and other common crimes charged against the prisoners could be "complexed" with the rebellion and warranted imposition of a penalty beyond *prision mayor*, there remains the issue *whether the mistake was or may be considered jurisdictional*. We think not.
>
> In providing for complex crimes, the Revised Penal Code did not set up a category of crimes independent of the component ones, but only for an aggravated form thereof. This rule was impelled by the desire to impose only one penalty for all offenses resulting from one and the same criminal impulse. Whether or not the offenses are so related as to constitute one single punishable violation evidently *depends upon the Court's appreciation of the facts of the case and the applicable law, and not upon its jurisdiction*, since it is not

[82] Pomeroy v. Director of Prisons, 107 Phil. 50 (1960).

> contested that the various component crimes were within the Court's power to try and adjudicate. *Granting that the sentencing court's estimate of the facts and its conclusion as to the governing law were erroneous, the mistake did not render it powerless to act upon the premises nor deprive it of authority to impose the penalty that in its view of the case was appropriate. The view it had taken was not such capricious and whimsical exercise of judgment or grave abuse of discretion as would amount to lack or excess of jurisdiction*, since at that time the Supreme Court had affirmed convictions for the complex crime of treason with murder and other offenses. As a matter of fact, the existence of the "complexed" rebellion is still upheld to this day by a sizable number of lawyers, prosecutors, judges and even justices of this court. Hence the error committed was correctible only by seasonable appeal, not by attack on the jurisdiction of the sentencing Court.[83] (emphasis supplied)

The same ruling was made by our Supreme Court in *Republic v. Yatco*[84] where the Court categorized such errors as those which were claimed to have been committed by the sentencing court in *Pomeroy* to be mere errors of judgment which were not correctible on *habeas corpus*. The Court in *Yatco* repeated the well-worn unsophisticated proposition that errors of fact or law, not being jurisdictional, cannot be corrected on *habeas corpus*:

> In a long line of decisions this Court has consistently held that *habeas corpus* will not lie to correct errors of fact or of law. The only exception to this rule is when the error affects the court's jurisdiction or is one that would make the judgment absolutely void.[85]

It is possible to view the *Pomeroy* situation, which was replicated in *Yatco*, to have not really involved any error of law committed by the sentencing court because the law which it applied in its judgment of conviction was the law as it was understood and interpreted at the time of promulgation of the judgment. Viewed in this light, it is easy to justify the conclusion that the sentencing court did have jurisdiction to pronounce the judgment of conviction when it did pronounce it. Even so, it is hard to square this concept of non-jurisdictional error in the imposition of a penalty which turned out to be excessive by virtue of subsequent law or doctrine, with the other rulings of the Supreme Court granting *habeas corpus* relief through the retroactive application of a penal provision favorable to the accused. But let us first see the *Pomeroy* Court's attempt at distinction:

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[83] *Id.* at 56-57.
[84] G.R. No. 17924, October 30, 1962, 6 SCRA 352 (1962).
[85] *Id.* at 356.

> While this court has also ruled that an excessive sentence or penalty imposed by final judgment may be corrected by *habeas corpus*, the cases where such ruling was applied involved penalties that could not be imposed under any circumstances for the crime for which the prisoner was convicted (subsidiary imprisonment for violation of special acts, in Cruz vs. Director of Prisons, 17 Phil., 269; imprisonment for contempt by refusal to execute a conveyance, instead of having the conveyance executed as provided by sec. 10 of Rule 39, in Caluag vs. Potenciano Pecson, 82 Phil., 8). In the present case, there is no question that the sentence meted out was the one provided by law for the complex crime of which herein applicants were indicted and convicted.[86]

In contrast, we see our Supreme Court in *Rodriguez v. Director of Prisons*[87] as granting an original petition filed with it for *habeas corpus* in favor of a prisoner by giving retroactive effect to a law which recognized a new mitigating circumstance. This is what the majority opinion in that case stated:

> The second question to decide is whether or not in *habeas corpus* proceedings the mitigating circumstance of voluntary confession of guilt established for the first time in Article 13, paragraph 7, of the Revised Penal Code, can be taken into consideration.
>
> The mitigating circumstances, as their name indicates, serve to lessen the penalty fixed by law, and whenever they are present courts are bound to take them into consideration, according to article 77, in connection with article 80, paragraph 3, of the old Penal Code, and article 62, in connection with article 64, paragraph 2, of the Revised Penal Code.
>
> In the present case, the trial court could not legally take into account the mitigating circumstance of voluntary confession of guilt, established in article 13, paragraph 7, of the new Penal Code, because it did not exist in the old Penal Code under which the petitioner herein was prosecuted and sentenced.
>
> Article 22 of the Revised Penal Code, above quoted, extends its benefits even to convicts serving sentence, and the only legal remedy open to them to make use of such benefits is the writ of *habeas corpus*, inasmuch as, if the penalty imposed upon them under the former penal law was decreased by the revised code, and the latter has retroactive effect, the excess has become illegal. Now then, it appearing from the sentence that there was a voluntary confession of guilt, and that it has served as the basis of conviction, and taking into consideration that had such circumstance been classified by the old Penal Code as a mitigating circumstance, the trial court would have been bound to give it effect, could we now disregard it without failing in our duty in order to give

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[86] Pomeroy v. Director of Prisons, 107 Phil. 50, 57 (1960).
[87] 57 Phil. 133 (1932).

> effect to the positive provisions of the law which make all penal laws retroactive in so far as they favor the accused, who is not an habitual criminal, there being no necessity to review the proceeding? In the case before us, the voluntary confession of guilt appears in the sentence and has served as the basis of the defendant's conviction by the trial court; for which reason we must take it into account, in order to give retroactive effect to article 22, cited above, of the Revised Penal Code for the benefit of the petitioner herein.[88]

The decision was a 6-5 decision, and Justice Malcolm, for the dissenters, pointedly argued:

> We stand squarely on the proposition that, after a court having jurisdiction of a criminal case has rendered a final judgment in that case and the convict has begun to serve his sentence in conformity with that judgment, the courts can not, in *habeas corpus* proceedings, enter upon a review of the decision or record to determine if a mitigating circumstance should be taken into account in order to obtain a reduction of the penalty and the liberation of the convict. *Habeas corpus* lies only to determine the question of the jurisdiction and lawful power of the custodian to hold the petitioner in custody, and is not available as a revisory remedy for the correction of errors either of law of fact. (29 C.J., 25; Trono Felipe vs. Director of Prisons [1913], 24 Phil., 121.) The Revised Penal Code provides that felonies and misdemeanors committed prior to the date of effectiveness of this Code shall be punished in accordance with the code or acts in force at the time of their commission, while retroactive effect may only be given to the Revised Penal Code for the benefit of the person guilty of a felony who is not a habitual criminal to determine the proper penalty as found under the old Penal Code and to contrast with it the penalty corresponding to the crime under the Revised Penal Code. But if the courts are to scrutinize the decision and the record to ascertain if mitigating circumstances now found for the first time in the Revised Penal Code are to be given effect, the courts will embark upon unchartered seas and unutterable confusion will result. We believe that the court should not now revise a final judgment by inserting in that judgment a finding relating to a mitigating circumstance, thus permitting the liberation of the accused. As a consequence, our vote is for the denial of the writ.[89]

Another Philippine case, that of *Directo v. Director of Prisons*,[90] suggested that *habeas corpus* relief would be available by giving retroactive effect, as the court in *Rodriguez* did, to a penal provision favorable to the accused. What happened in *Directo* was that the trial court, after it sentenced the accused and after the sentence had become final, amended this sentence to lower the penalty

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[88] *Id.* at 134-36.
[89] *Id.* at 137-38.
[90] 56 Phil. 692 (1932).

by giving retroactive effect to a subsequently enacted penal law lowering the penalty. The Court ruled that the amendment of the judgment was made without jurisdiction because the judgment of conviction had already become final. But it added that "the only means of giving retroactive effect to a penal provision favorable to the accused when the trial judge has lost jurisdiction over the case, is the writ of *habeas corpus*."[91]

Rodriguez, which granted *habeas* relief to allow for appreciation of a belatedly recognized mitigating circumstance, was evidently not followed in the later case of *Santiago v. Director of Prisons*.[92] In *Santiago*, the petitioning convict claimed that he was wrongly sentenced to the maximum penalty on account of the undue appreciation of the aggravating circumstance of recidivism against him. The convict's theory was that her two other sentences should have been regarded as only one because they were tried and decided by the same court. Such a claimed error, ruled the Court, is non-jurisdictional but a mere error of fact or law which is not correctible on *habeas corpus*.

Even more ironical is the decision in *Paguntalan v. Director of Prisons*,[93] which was promulgated only two days after *Rodriguez*[94] but with a contradictory result. In *Paguntalan*, the issue was whether *habeas* relief was available to correct an error in the imposition of the penalty due to a misappreciation of the rule on habitual delinquency. The *Paguntalan* Court ruled, as *Santiago* did, in the negative on the following reasoning:

> In the present case the petitioner does not invoke the benefit of article 22 of the Revised Penal Code, giving retroactive effect to penal provisions so far as they are favorable to the accused, provided he is not an habitual criminal, but seeks the review of a sentence which has proved erroneous in view of a subsequent doctrine laid down by this court the error consisting in that, instead of counting the various convictions as one only, due to the proximity and almost simultaneity of the commission of the several crimes of which the petitioner was convicted, the same were considered as separate convictions for the purposes of the law establishing habitual delinquency. This error could have been corrected by appeal, for it was rather an error of judgment and not an undue exercise of judicial powers which vitiates and nullifies the proceeding. This court has repeatedly held that mere errors of fact or law which do not nullify the proceedings taken by a court in the exercise of its functions, having

[91] *Id.* at 695.
[92] 77 Phil. 927 (1947).
[93] 57 Phil. 140 (1932).
[94] Rodriguez v. Director of Prisons, 57 Phil. 133, was decided on August 29, 1932, whereas Panguntalan v. Director of Prisons, 57 Phil. 140, was decided on August 31, 1932.

> jurisdiction over the crime and over the defendant, cannot be corrected through the special remedy of *habeas corpus*. (Trono Felipe v. Director of Prisons, 24 Phil., 121; U.S. v. Jayme, 24 Phil., 90; McMicking v. Schields, 238 U.S., 99; Phil., 971)[95]

The *Paguntalan* ruling was reiterated 16 years later in *Fortuno v. Director of Prisons*,[96] but not without a forceful dissent from the inimitable Justice Perfecto. *Fortuno*, which was followed *sub silencio* in *Sotto v. Director of Prisons*,[97] pronounced:

> The second ground is that the additional penalty of 10 years of imprisonment imposed upon the petitioner ... was illegal and in excess of the jurisdiction of the court, because his conviction for illegal possession of counterfeit bills should not be counted for habitual delinquency purposes, since said conviction is not for robbery, theft, *estafa* or falsification. In other words, petitioner's contention is that his previous conviction for illegal possession of counterfeit bills was wrongly included. Such mistake, even if true, cannot be corrected in a proceeding for *habeas corpus*, for there is virtually no difference between the alleged error and that pointed out in Paguntalan v. Director of Prisons, 57 Phil., 140, wherein it was held that the error of counting as separate convictions various convictions which should be counted as one due to the proximity of the commission of the crimes, should "have been corrected by appeal, for it was rather an error of judgment and not an undue exercise of judicial power which vitiates and nullifies the proceeding."[98]

Justice Perfecto minced no words in his dissent in *Fortuno*:

> Petitioner attacks the legality of the additional penalty of 10 years of imprisonment imposed upon him .... because his conviction for illegal possession of counterfeit bills should not be counted for habitual delinquency purposes, since said conviction is not for robbery, theft, estafa or falsification. The complaint is well founded. Illegal possession of counterfeit bills cannot be classified as robbery, theft, estafa or falsification. Petitioner is entitled to relief. We disagree with the majority's position that the error cannot be corrected in a proceeding for *habeas corpus*. *It is not a case of a simple harmless mistake. It is a case of manifest illegality* which this Court is duty bound to correct if true justice is to be administered. The case of Paguntalan (57 Phil., 140) is invoked in support of the theory that appeal is the proper remedy. The theory is unreasonable and no authority can make it reasonable. All authorities have to

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[95] Panguntalan v. Director of Prisons, 57 Phil. 140, 143-44 (1932).
[96] 80 Phil. 187 (1948).
[97] G.R. No. 18871, May 30, 1962, 5 SCRA 293.
[98] 80 Phil. 187, 189 (1948).

> bow before the authority of reason. To give your back to reason is to defeat justice.[99] (emphasis supplied)

It seems to be a matter of indifference to our Supreme Court whether the error in the imposition of the additional penalty due to habitual delinquency is one of law as in *Paguntalan* or one of fact. In *Cuenca v. Superintendent of the Correctional Institute for Women*[100] the error was one of fact, *i.e.*, in the sentencing court's appreciation of the previous convictions of the accused, and yet the error was held to be "merely an error of judgment"[101] not reviewable on *habeas*.

The teetering and see-sawing on the matter of reviewability of the penalty imposed by a final judgment of conviction was seemingly put to rest in the 1971 decision of our Supreme Court in *Gumabon v. Director of the Bureau of Prisons*,[102] *Gumabon* really and definitely overruled *Pomeroy* despite the express disclaimer by Justice Fernando for the Court that the decision was not meant "to go so far as to overrule *Pomeroy*."[103] The facts of *Gumabon* were essentially no different from the facts of *Pomeroy*. What may have been the critical differentiating factor was that the petitioning convicts in *Gumabon* had a lawyer, to wit, Attorney Jose W. Diokno, who presented their case more expansively than the Pomeroys. The petitioning convicts in *Gumabon* were all sentenced to suffer *reclusion perpetua* for the complex crime of rebellion with multiple murder and other offenses. Then came the new doctrine announced by the Supreme Court in the *Hernandez* case[104] that there is no such crime as a complex crime of rebellion but only one of simple rebellion for which the maximum penalty is *prision mayor* only and which maximum penalty was already served out as of the date of the filing of their *habeas corpus* petition. The Court granted the writ of *habeas corpus* petition because it adjudged, among one of two reasons, that petitioner's continued imprisonment would result in the denial to them of equal protection as others similarly situated but who were convicted after the new doctrine was announced were meted out with sentences of *prision mayor* only. Here is the Court's reasoning:

> The fear that the Pomeroy ruling stands as an obstacle to their release on a *habeas corpus* proceeding prompted petitioners, as had been mentioned, to ask that it be appraised anew and, if necessary, discarded. We can resolve the present petition without doing so. The plea there made was unconvincing,

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[99] *Id.* at 191-92.
[100] G.R. No. 17400, December 30, 1961; 3 SCRA 897.
[101] *Id.* at 903.
[102] G. R. No. L-30026, January 30, 1971, 37 SCRA 420.
[103] *Id.* at 421.
[104] People v. Hernandez, 99 Phil. 5 (1956).

there being a failure to invoke the contentions now pressed vigorously by their counsel, Attorney Jose W. Diokno, as to the existence of a denial of a constitutional right that would suffice to raise a serious jurisdictional question and the retroactive effect to be given a judicial decision favorable to one already sentenced to a final judgment under Art. 22 of the Revised Penal Code. To repeat, these two grounds carry weight. We have to grant this petition.

The fundamental issue, to repeat, is the availability of the writ of *habeas corpus* under the circumstances disclosed. Its latitudinarian scope to assure that illegality of restraint and detention be avoided is one of the truisms of the law. It is not known as the writ of liberty for nothing. The writ imposes on judges the grave responsibility of ascertaining whether there is any legal justification for a deprivation of physical freedom. Unless there be such a showing, the confinement must thereby cease. If there be a valid sentence it cannot, even for a moment, be extended beyond the period provided for by law. Any deviation from the legal norms call for the termination of the imprisonment.

Rightly then could Chafee refer to the writ as "the most important human rights provision" in the fundamental law. Nor is such praise unique. Cooley spoke of it as "one of the principal safeguards to personal liberty." For Willoughby, it is "the greatest of the safeguards erected by the civil law against arbitrary and illegal imprisonment by whomsoever detention may be exercised or ordered." Burdick echoed a similar sentiment, referring to it as "one of the most important bulwarks of liberty." Fraenkel made it unanimous, for him, "without it much else would be of no avail." Thereby the rule of law is assured.

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There is the fundamental exception though, that must ever be kept in mind. Once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment is deemed ousted of jurisdiction and *habeas corpus* is the appropriate remedy to assail the legality of the detention.

Petitioners precisely assert a deprivation of a constitutional right, namely, the denial of equal protection. According to their petition: "In the case at bar, the petitioners were convicted by Courts of First Instance for the very same rebellion for which Hernandez, Geronimo, and others were convicted. The law under which they were convicted is the very same law under which the latter were convicted. It had not and has not been changed. For the same crime, committed under the same law, how can we, in conscience, allow petitioners to suffer life imprisonment, while others can suffer only *prision mayor?*"

They would thus stress that, contrary to the mandate of equal protection, people similarly situated were not similarly dealt with. What is required under this constitutional guarantee is the uniform operation of legal norms so that all

> persons under similar circumstances would be accorded the same treatment both in the privileges conferred and the liabilities imposed. As was noted in a recent decision: "Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances, which if not identical are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding on the rest."
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> The argument of petitioners thus possesses a persuasive ring. The continued incarceration after the twelve-year period when such is the maximum length of imprisonment in accordance with our controlling doctrine, when others similarly convicted have been freed, is fraught with implications at war with equal protection. That is not to give it life. On the contrary, it would render it nugatory. Otherwise, what would happen is that for an identical offense, the only distinction lying in the finality of the conviction of one being before the Hernandez ruling and the other after, a person duly sentenced for the same crime would be made to suffer different penalties.[105]

D. Issue of Correctness of Ruling on the Defenses of the Accused

Labeling an error as jurisdictional or non-jurisdictional has not proved to be a reliable litmus test of the availability of *habeas* relief. This is made starkly evident in Philippine Supreme Court decisions on the reviewability on *habeas* of the convicting court's rulings on the defenses of the accused.

In an early case, *Trono Felipe v. Director of Prisons*,[106] it was held that a wrongful conviction for abduction of a virgin with consent cannot be overturned on *habeas corpus* even if it be shown that the abductee was over 18 years old at the time. This is what the Court there said:

> If the record in the former case disclosed that the woman was between 18 and 20 years old, as alleged by the petitioners, and, indeed if it failed to disclose that she was less than 18 years of age, and had the doctrine laid down in the Fideldia case been applied to the facts thus found, the defendants should have been acquitted in the lower court, or in the event of their conviction, the judgment of conviction should have been set aside on appeal. The fact is, however, that both in the court below and in this court on appeal, the point passed *sub silentio*, and the attention of neither court was invited or directed to the question raised in the later case (U.S. vs. Fideldia, *supra*) upon a discussion of which it was held that the Code provisions defining and penalizing the crime

[105] G. R. No. 30026, January 30, 1971, 37 SCRA 420, 422-28.
[106] 24 Phil. 121 (1913).

> of *rapto* had been modified, so as to reduce the age limit of women who may become the victims of such abductions from 23 to 18.
>
> But the writ of habeas corpus is not a remedy provided for the correction of such errors. Courts cannot, in habeas corpus proceedings, review the record in a criminal case after judgment of conviction has been rendered, and the defendants have entered on the execution of the sentence imposed, to ascertain whether the facts found by the trial were in accordance with the evidence disclosed by the record, or in order to pass upon the correctness of the conclusions of law by the trial court based on the facts thus found. Under the statute, a commitment in due form based on a final judgment convicting and sentencing a defendant in a criminal case is conclusive evidence of the legality of his detention under such commitment, unless it appears that the court which pronounced the judgment was without jurisdiction or exceeded its jurisdiction in imposing the penalty. Mere errors of law or of fact, which did not have the effect of depriving the trial court of its jurisdiction over the cause and the person of the defendant, if corrected at all, must be corrected on appeal in the form and manner prescribed by law.[107]

Similarly, our Supreme Court, by majority vote in *Santos v. Superintendent of Phil. Training School for Girls*,[108] adjudged that the convicting court's ruling on the defense of prescription of the offense raised by the accused, cannot be overturned on *habeas* review. In that case, the fact that the crime charged had already prescribed was evident from the record but the accused had failed to invoke prescription as a defense and so was deemed to have waived it. To the Court prescription of the offense does not deprive the convicting court of jurisdiction, and its ruling on the defense of prescription (which was not raised) can no longer be reversed on *habeas corpus*. But the dissent thought that prescription of the offense involved the extinguishment of criminal liability which meant that the State had lost the right to punish the accused. The majority opinion lacked the basic perceptiveness of the dissent's analysis. Here is what the majority said:

> That the defense of prescription is no ground for the issuance of a writ of *habeas corpus* is a doctrine recognized by the North American jurisprudence, as may be seen from the following:
>
> "If the statute of limitations is relied upon, it must be set up at the trial, either by a special plea or under the general issue. It is not a ground for a demurrer to the indictment, at least where the indictment does not show on its face that defendant is not within the exception of the statute. Nor is the

[107] *Id.* at 123-24.
[108] 55 Phil. 345 (1930).

> defense available on a motion in arrest of judgment, or *on an application for a writ of habeas corpus*". (16 C.J., 416) (italics ours.)
>
> All questions which may arise in the orderly course of a criminal prosecution are to be determined by the court to whose jurisdiction the defendant has been subjected by the law, and the fact that a defendant has a good and sufficient defense to a criminal charge on which he is held *will not entitle him to his discharge on habeas corpus.*" (12 R.C.L., 1206.) (italics ours.)
>
> The petitioner cites cases both local and from the courts of the United States to the effect that lack of jurisdiction over the defendant or the offense is a ground for the issuance of a writ of *habeas corpus*. This is true, inasmuch as lack of jurisdiction constitutes a fatal defect annulling all proceedings; but *the prescription of an offense does not deprive a court of jurisdiction*. By prescription the State or the People loses the right to prosecute the crime or to demand the services of the penalty imposed; but this does not mean that the court loses jurisdiction either over the matter of litigation or over the parties.
>
> For this reason, the action which should be taken by a competent court upon the plea of prescription of the offense or the penal action, duly alleged and established, is not to inhibit itself, which would be proper if it had no jurisdiction, but on the contrary to exercise jurisdiction, and to decide the case upon its merits, holding the action to have prescribed, and absolving the defendant.
>
> Thus, the Spanish Law of Criminal Procedure of September 14, 1882, known as suppletory law and as a sound doctrine contained in rule 95 of the Provisional Law for the application of the provisions of the Penal Code to the Philippine Islands, in treating in articles 666 *et seq.* of the preliminary defenses (the prescription of crimes is there so considered), *distinguishes cases of prescription from those of lack of jurisdiction*, and clearly provides (article 674) that when the question of lack of jurisdiction is raised, and the court deems it well taken, it shall abstain from taking cognizance of the case, whereas if the exception taken refers to the prescription of the crime, then (article 675) the court decides the case by dismissing it and ordering that the defendant be set at liberty."[109] (emphasis supplied)

Upon the other hand, the *Santos* dissent went for the jugular as it saw the impact of prescription on the court's jurisdiction to convict, reasoning that a court cannot fairly be said to have jurisdiction to convict a person for a prescribed offense anymore than it can convict him for something not criminal. The dissent's reasoning bears the force of logic and reason:

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[109] *Id.* at 348-349.

The majority opinion revokes this order on the ground that the prescription of the violation of the municipal ordinance in question is not a defense in *habeas corpus* proceedings, although the majority opinion admits that the alleged prescription has been proved of record. A liberal interpretation of the petitioner's allegations leads me to believe that the real ground for asking the writ is the lack of jurisdiction on the part of the municipal judge to try and commit Virginia Santos, whose criminal liability has become extinguished by an express provision of the law. And the question of jurisdiction is a proper matter in cases of this character.

If the doctrine laid down in the majority opinion prevails, we shall have the legal paradox of committing a person for alleged violation of a municipal ordinance, although that person's criminal liability has become extinguished by an express provision of the law; or, in other words, we shall have the case of a person who, alleging illegal commitment and praying for release, is, in spite of proving freedom from criminal liability, condemned to remain in confinement because the defense was not alleged in time. This is not, to my mind, in accord with the principles of justice and equity. If the record shows that the alleged prescription of the infraction has been established, as the majority opinion admits, it would seem that the order appealed from must inevitably be affirmed, since there is no right to punish or chastise a person exempt from criminal liability.

Undoubtedly, Virginia Santos, when accused in the municipal court on July 3, 1930, of having violated section 819 of the Revised Ordinances of the City of Manila committed on April 13, 1930, was already exempt from criminal liability, because article 130 of the Penal Code and section 1 of Act No. 3326 provide that misdemeanors or violations of municipal ordinances prescribe in two months, and this prescription has the legal effect of extinguishing the criminal liability of the person who may have committed such a misdemeanor or violation.

But setting its technically aside, inasmuch as in the present case the law declares the violation of the municipal ordinance in question to have prescribed, I understand that the People has no right to prosecute the defendant, nor to chastise her, nor to hold her subject to its penal action, and she should therefore be released. The petitioner could have resorted to the municipal court in order to ask, not for judgment, as he erroneously did, but for the final dismissal of the case by virtue of the doctrine established in People v. Moran (44 Phil., 387).

But since he has come to this court by virtue of the appeal taken by the respondent, we should not allow technicalities to stand in the way of letting the

> institution of the writ of *habeas corpus* produce its natural effects, and safeguard individual liberty.[110]

E. Reviewability of other Procedural Defects Infecting the Judgment of Conviction

If errors in the imposition of the penalty were deemed non-jurisdictional and therefore not proper basis for overturning the sentence by the convicting court, there is less reason to expect greater receptivity on *habeas* for procedural errors which may have infected the judgment of conviction. The prevailing thinking of our Supreme Court is that mere procedural errors do not undermine the jurisdiction of the convicting court and therefore do not render the judgment of conviction vulnerable to *habeas corpus* attack. Therefore, a mere failure of the information to sufficiently allege that the accused was a habitual delinquent is regarded to be a mere defect of procedure, which, though it may have the effect of voiding the judgment, cannot be reviewed on *habeas corpus* proceedings.[111] This view also became the subject of Justice Perfecto's dissent in *Fortuno* which argued that any issue which goes into the legality of a person's deprivation of liberty is an issue which is precisely reviewable on *habeas*:

> Another ground of petitioner is that the information ... did not contain any allegation that he was a habitual delinquent. But this contention is dismissed by the majority upon the theory that the error or defect of procedure "though it may have the effect of voiding the judgment, cannot be reviewed in *habeas corpus* proceedings wherein the only issue is whether or not the petitioner is entitled to release." This position appears to us to be untenable and absurd. Of course it is elemental that the issue in *habeas corpus* proceedings is whether or not the detained or imprisoned person is entitled to release, but this is only the conclusion to be arrived at and it has to be based on the result of the inquiry as to whether or not the detention or imprisonment is legal or illegal. The right to be released is merely a conclusion, and should be gathered from a result of the question as to the legality or illegality of the deprivation of liberty. When this deprivation is based on a judgment, the validity of the judgment becomes an issue essential in the *habeas corpus* proceedings. When a prisoner is deprived of his freedom by virtue of a void judgment he is entitled to be released on *habeas corpus*.[112]

In the same vein is the ruling that *habeas* may not be used to upset a ruling admitting an amendment of the complaint because any error in admitting

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[110] *Id.* at 350-352.
[111] Fortuno v. Director of Prisons, 80 Phil. 187 (1948).
[112] *Id.* at 192.

the amendment does not make the judgment of conviction absolutely void.[113] This ruling was made in a 1905 case which had somewhat peculiar facts as follows:

The petitioner-convict was tried and convicted for theft in the justice of the peace court and pending appeal from his conviction to the CFI, the provincial fiscal filed an amended complaint. The Court ruled that the fiscal did not actually amend the complaint but even if he did the error would not affect the jurisdiction of the court and make its judgment absolutely void. No real prejudice was caused the accused in this case because the "amendment" was merely formal in that the same offense was charged except the one filed in the justice of the peace was filed by the injured party himself whereas the one filed in the CFI was by the provincial fiscal and merely substituted the first complaint.

Lapses in pleading may be glossed over as non-jurisdictional especially when they are non-prejudicial. But it would be hard to accept an improper arraignment as a mere procedural error which does not impinge on the substantive rights of the accused. Yet this is precisely what happened *in Domingo v. Director of Prisons*[114] in which there was a strong and persuasive dissent, also by Justice Perfecto.

In *Domingo*, the petitioner-convict was originally charged with murder, and on which charge he was arraigned and to which he pleaded not guilty. When the case was called for trial, his counsel stated that he would plead guilty to homicide but not to murder and to which proposal the fiscal agreed. According to the *habeas corpus* petition, the trial court then simply proceeded to convict the accused of homicide without inquiring from him whether he was pleading guilty to homicide. The Court dismissed the *habeas corpus* petition, which was originally filed with it, and went on to say that even if there was no re-arraignment such an omission was a mere defect of procedure not correctible on *habeas*:

> The allegation, if true, that the judgment of conviction was rendered without a plea of guilty properly entered by the accused to the lesser offense of homicide, is merely a defect of procedure, not of jurisdiction, though it may have the effect of voiding the judgment. And this error of procedure cannot be reviewed in *habeas corpus* proceedings wherein the only issue is whether or not the petitioner is entitled to release. And the petitioner is not entitled to release even if we have power to set aside the judgment upon the ground aforementioned, for, in such event, the proper procedure would be to reopen

[113] Andres v. Wolfe, 5 Phil. 60 (1905).
[114] 77 Phil. 1053 (1947).

> the criminal case and order the trial court to proceed further as if no judgment has ever been entered therein, that is, it must arraign the accused for the lesser offense of homicide after the information is duly amended, then try the case if the accused pleads not guilty, and the latter in the meantime should remain in confinement if he is not on bail. But this correction of procedure can be done only in an appeal or in an action for *certiorari* wherein the trial court is made respondent and is amenable to our orders.[115] (emphasis supplied)

The foregoing explication does not make sense. If the error is correctable on *certiorari*, then it is hard to comprehend why it is not also correctible on *habeas corpus* considering that both remedies presuppose a final judgment. Justice Perfecto, in dissent, saw this point as he even suggested that the majority was engaged in meaningless word-play when it denominated the error as "procedural" and not "jurisdictional":

> Defect of procedure are words that express a very wide range of ideas, which include the most insubstantial and harmless and those which encroach into the fundamental rights of an accused. Generalities are often resorted to for the purpose of avoiding hard or disagreeable problems. Excess of jurisdiction is also a defect of procedure, and the majority in stating both ideas, - the one contradicting the other, - are laboring under the wrong premise of eliminating a particular idea from the general which comprises it. From a wrong premise we cannot expect a correct conclusion.
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> Of course, the issue in this case is whether petitioner is entitled to be released or not, a question which necessarily involves the question whether he is illegally deprived of his liberty. As we have shown, the judgment convicting petitioner, by virtue of which he is confined in prison, is a nullity. The majority makes the lukewarm admission that the fact that petitioner did not personally enter a plea of guilty "may have the effect of voiding the judgment." This dubitative and nubilous statement is not clarified in any part of the majority opinion. If the judgment under the authority of which petitioner is deprived of his liberty, is null and void, then his confinement should be declared illegal for lack of a legal basis to support it.
>
> The majority evade facing the full consequences of the illegality of the confinement by resorting to a technicality. Without good grounds or any ground at all in support of their position, they opine that *habeas corpus* is not the proper procedure but a reopening of the criminal case in which the illegal and void judgment has been rendered. The position has the evident purpose of depriving petitioner of legal remedy to the illegality of which he is a victim, by denying him the remedy of *habeas corpus*, to which recourse he has resorted on time, and offering him instead a remedy the time for whose usefulness had

[115] *Id.* at 1055-56.

> already elapsed, that is the remedy of an appeal months after it could be resorted to. It is true that *certiorari* proceedings is also suggested. But if there is substantial meaning in their suggestion, we do not see any reason why the present petition for *habeas corpus* cannot be considered also as an action for *certiorari*, although, if necessary, it be amended to follow the majority's suggestion that the trial court be made a respondent.[116]

Again, the lapse in *Domingo* may be downplayed as not seriously prejudicial to the accused because he did actually agree through counsel to plead guilty to a charge of homicide. But the omission in *Talavera v. Superintendent and Warden of Correctional Institute for Women*[117] was a grievous one which was definitely prejudicial to the accused. The omission in *Talavera* was in the failure of the court to inform the accused at the arraignment of her right to counsel. The accused then pleaded guilty upon arraignment. In refusing to overturn the judgment of conviction, the Court acknowledged that the omission to advise the accused upon arraignment of her right to counsel is a violation of her constitutional right but incredibly, nonetheless ruled that the omission was not serious enough to warrant issuance of the writ of *habeas corpus*:

> Although it appears from the evidence adduced at the hearing of the petition for *habeas corpus* that the accused Felicidad Talavera de Cembrano had not been informed of her constitutional right to be heard by herself or counsel, and although section 17 of General Orders No. 58 imposes on the court the duty to inform her of such right and to ask whether she desires to have a lawyer before arraignment, which does not positively appear to have been done, nevertheless, *the mere violation of constitutional provisions or the denial of a constitutional right in the proceedings in a case, cannot be a ground for a petition for a writ of habeas corpus* when the error is not of such a nature as to void the whole proceedings, and the remedy for such error is ordinarily that of appeal. (29 *Corpus* Juris, page 29.) "Mere errors in point of law, however serious, committed by a criminal court in the exercise of its jurisdiction over a case properly subject to its cognizance, cannot be reviewed by *habeas corpus*. That writ cannot be employed as a substitute for the writ of error." (Citations follow.) (McMicking v. Schields, 238 U.S., 99; 59 Law. Ed., 1220; 41 Phil., 971, 979.)
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> In view of the foregoing considerations, we are of the opinion and so hold that the failure of a court to inform the accused before arraignment of his right to be assisted by counsel, is an error of law which should be remedied by appeal and cannot be a ground for a petition for a writ of *habeas corpus*."[118] (emphasis supplied)

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[116] *Id.* at 1063-64.
[117] 67 Phil. 538 (1939).
[118] *Id.* at 542-43.

It would also appear that the filing of an information by one not authorized to file it will not, in the mind of our Supreme Court, constitute a jurisdictional error as to warrant overturning the judgment of conviction on *habeas* review.[119]

But what if the lapse were in the total absence of any written judgment of conviction? Startlingly enough, such a lapse had also been put down by our Supreme Court as not serious enough to warrant release of the convict on *habeas*. This was the holding in *Talabon v. Iloilo Provincial Warden*[120] where the Court pronounced:

> The principal ground alleged in the petition is, that the petitioner is illegally detained for the reason that the judgment rendered by said court is not in writing and does not contain findings of facts as the basis of conviction, in violation of the provision of section 2, Rule 116, of the Rules of Court which was enacted in conformity with the provision of section 12, Article VIII of the Constitution.
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> x x x
>
> The fact that the judgment of the Court of First Instance of Iloilo was made verbally without prejudice to put it subsequently in writing, and that no written decision with findings of facts has been rendered up to the filing of the petition, did not make the judgment absolutely void, because failure on the part of the court to comply with the above quoted provisions of the Rules of Court and the Constitution did not divest the lower court of its jurisdiction acquired over the offense and the petitioner. In many cases (among them, those of Montelibano and Sichon v. Director ofLands, 21 Phil., 449; Ungson v. Basco and Zandueta, 29 Phil., 575; and Director of Lands v. Sanz, 45 Phil., 117) in which the trial court had failed to comply with the provision of section 133 of the old Code of Civil Procedure requiring that a decision in civil cases must be in writing and contain findings of facts, this Court did not dismiss the appeal on the ground that the court *a quo* had thereby lost its jurisdiction, but remanded the case to the lower court for compliance with said requirement. To hold otherwise would be to rule that a court that has jurisdiction will preserve it if it does not commit any error or applies correctly the law, and it will lose its jurisdiction if it does not act in accordance with the law, which is obviously untenable.
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> The provision of section 12, Article VIII, of the Constitution that "no decision shall be rendered by any court of record without expressing therein

[119] *See* Ngo Yao Tit v. Sheriff of Manila, 27 Phil. 378. (obiter)
[120] 78 Phil. 509 (1947).

> clearly and distinctly the facts and the law on which it is based," which had been incorporated substantially in section 2, Rule 116 of the Rules of Court, refers only to the form of the judgment. It does not affect the jurisdiction of the court rendering it. The substance of the judgment is defined in section 1, of said Rule 116, which says that it is "the adjudication by the court that the defendant is guilty or is not guilty of the offense charged, and the imposition of the penalty provided for by law on the defendant, who pleads or is found guilty thereof."
>
> It is evident that noncompliance with the above-quoted provision of the Constitution by a court of competent jurisdiction, as noncompliance with the provision of a statute relating to the same matter, is an error or irregularity; but it is *not jurisdictional*, nor does it make the judgment absolutely void for lack of jurisdiction. The Constitution is superior to a statute, and is called the supreme law of the land, not because it is different in nature or character from the latter, nor because noncompliance therewith is jurisdictional, where it does not so provide, but because it is the fundamental or organic law. A constitution only differs from a statute in that the latter must provide the details of the subject of which it treats, whereas a constitution states the general principles and builds the substantial foundation and general framework of law and government, and for that reason a statute contrary to or in violation of the Constitution is null and void.
>
> The judgment that convicted the petitioner-defendant, not absolutely void because the court that rendered it had jurisdiction over him, the offense and the particular penalty imposed therein, is defective because it does not conform to the form required by the law and the Constitution, and the proper remedy for the petitioner is to appeal from said judgment, or petition for *mandamus* to compel the Judge of the Court of First Instance to put in writing the decision of the court in said case."[121] (emphasis supplied)

Noteworthy is the suggestion in the above-quoted opinion that *mandamus*, not *habeas corpus*, is the proper remedy. This suggestion is of a piece with the suggestion made in *Domingo* that *certiorari* and not *habeas corpus* is the correct remedy. Expectedly, this kind of reasoning drew strong protest from Justice Perfecto whose language in dissent was as follows:

> Upon the facts in this case, petitioner is confined by virtue of a commitment issued on January 22, 1945, based on a judgment consisting solely a "verbal dispositive part," without any statement of fact in support thereof, much less any statement of the law applicable.
>
> Said judgment, having been rendered in open violation of the Constitution, is null and void. To make effective the constitutional mandate,

[121] *Id.* at 603-606.

> the Rules of Court requires that a decision be written and signed by the judge. (Section 2 of Rule 116.) No such thing has been done in this case. If the judgment, the "verbal dispositive part," upon which the commitment was issued was and is null and void, the commitment has no leg to stand on and it must fall by its own weight. The commitment becomes apodous. Petitioner's confinement, being based on said commitment, must be declared illegal. Therefore, petitioner is entitled to be immediately released."[122]

F. Cognizability of Constitutional Claims

The broad statement in *Talavera* "that mere violation of constitutional provisions or the denial of a constitutional right in the proceedings in a case, cannot be a ground for a petition for a writ of *habeas corpus* when the error is not of such a nature as to void the whole proceedings" casts a dark shadow on the status and prospects of *habeas corpus* as a mode of post-conviction review in this jurisdiction. If a violation of a constitutional right of an accused which led, or significantly contributed, to his conviction cannot be the basis for vacating this conviction on *habeas* review, then *habeas corpus* would be stripped of its essential vitality. For there can be no more serious challenge to the legality of a person's confinement, detention or deprivation of liberty than that these were obtained through unconstitutional means.

On the whole, our Supreme Court has evinced sympathy for the violation of Constitutional rights. From its decisions there may be discerned a manifest predisposition to make *habeas* relief available where the judgment of conviction had involved the violation of the Constitutional rights of the accused. As far as this writer's review of the cases goes, the following areas of Constitutional rights violation had been considered on *habeas corpus* post-conviction review: denial of due process, double jeopardy, illegal obtention of evidence, speedy trial, right to prepare for trial, equal protection, and right against self-incrimination. We shall now examine the Philippine cases in this area and then compare them to what the United States Supreme Court had adjudged or said on the same subject.

1. Double Jeopardy

The failure to appreciate, or an incorrect appreciation of, the double jeopardy objection will not render a judgment of conviction vulnerable to attack on *habeas corpus*. This is especially true where the double jeopardy objection could have been raised on appeal. Misappreciation or non-appreciation of the double

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[122] *Id.* at 616-617.

jeopardy objection is not a jurisdictional error correctible on *habeas*. It was Justice Malcolm himself who said so for our Supreme Court in *Quintos v. Director of Prisons*.[123]

> Former jeopardy is a defense which must be pleaded at the time of the arraignment. The general rule, with certain exceptions, is that the question of a second jeopardy is not reviewable upon a writ of *habeas corpus*. The reason is that such a defense does not go the jurisdiction of the trial court but involves simply the judgment of the court which, if wrongfully exercised, is but mere error not reviewable upon *habeas corpus* (*Ex parte* Bigelow [1885], 113 U.S., 328; In the Matter of Cardona [1917], 10 Porto Rico Fed., 40; 1 Bailey on *Habeas Corpus*, sec. 40).[124]

2. Illegally Obtained Evidence

Fresh wind and brighter skies were brought in recently by the 1999 *per curiam* decision of our Supreme Court in *Andal v. People*.[125] The case was in the Supreme Court on an original petition for *habeas corpus* by three convicts who were about to be executed pursuant to a final judgment of conviction by the RTC-Batangas for rape with homicide. Basis for their pleaded grievance was their having been identified before trial without the assistance of counsel. Although the Court found the claimed constitutional right violation to be without factual basis, it conceded, in the fashion of modern United States Supreme Court jurisprudence, that the violation of the constitutional rights of the accused would open a judgment of conviction to collateral attack on *habeas*. Broadly speaking, the Court said:

> The petitioners rely on the argument that the trial court was "ousted" of jurisdiction to try their case since the pre-trial identification of the accused was made without the assistance of counsel and without a valid waiver from the accused. The petitioners cite the case of Olaguer v. Military Commission No. 34, wherein in a separate opinion, Justice Claudio Teehankee stated that "Once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment is deemed ousted of its jurisdiction and *habeas corpus* is the appropriate remedy to assail the legality of the detention.
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> We agree with petitioners that the extra-ordinary writ of *habeas corpus* is the appropriate remedy to inquire into questions of violation of the petitioners'

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[123] 55 Phil. 304 (1930). Reiterated in Culanag v.Director of Prisons, G.R. No. 27206, August 26, 1967, 20 SCRA 1123.

[124] *Id.* at 306.

[125] G.R. Nos. 138268-138269, May 26, 1999, 307 SCRA 650.

> constitutional rights and that this Court has jurisdiction to entertain this review. Indeed, under the Constitution, the jurisdiction of this Court has been expanded "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.
>
> And under Rule 102, Section 1 of the Revised Rules of Court, it is provided that "Except as otherwise expressly provided by law, the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto."
>
> He may also avail himself of the writ where as a consequence of a judicial proceeding (a) there has been a deprivation of a constitutional right resulting in the restraint of a person; (b) the court had no jurisdiction to impose the sentence; or (c) an excessive penalty has been imposed, as such sentence is void as to such excess.[126] (emphasis supplied)

3. Speedy Trial

An unjustified delay in the trial may not even be a ground for upsetting on *habeas* the judgment of conviction, and so our Supreme Court suggested in *Talabon*.[127]

4. Due Process

It is fairly clear that our Supreme Court will strike down on *habeas* a final judgment of conviction where the accused was denied due process. It did so in *Abriol v. Homeres*.[128] In this case, accused was charged with illegal possession of firearms and ammunition. After the prosecution had presented its evidence and rested its case, accused moved to dismiss the case on the ground of insufficiency of the evidence. Finding the evidence sufficient to convict, the trial court denied the motion, whereupon the accused offered to present evidence but the trial court did not allow him to do so but instead convicted and sentenced him. Accused appealed to the Court of Appeals but the appeal was dismissed for failure to file brief. Hence, accused filed a petition for *habeas corpus* contending that his conviction was null and void because it had been rendered without due process of law. The trial court denied the petition for *habeas corpus* and hence his appeal to the Supreme Court from this denial.

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[126] *Id.* at 652-53.
[127] Talabon v. Iloilo Provincial Warden, 78 Phil. 509 (1947).
[128] 84 Phil. 525 (1949).

On appeal, the Supreme Court reversed the denial and remanded the case to the trial court to allow the accused to present his evidence. Following United States Supreme Court precedents, our Supreme Court declared:

> The main question to decide is whether the writ of *habeas corpus* lies in a case like the present. The general rule is that the function of a writ of *habeas corpus* in permitting the petitioner to challenge by collateral attack the jurisdiction under which the process or judgment by which he is derived of his liberty was issued or rendered cannot be distorted by extending the inquiry to mere errors of trial courts acting within their jurisdiction. (25 Am. Jur., *Habeas Corpus*, sec. 13, p. 152.) This principle, however, has been qualified in the sense that it "is not to be so applied as to destroy constitutional safeguards of human life and liberty." (Johnson v. Zerbst, 304 U.S., 458; 82 Law. Ed., 1461.)
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> Appellant relies upon the case of Schields v. McMicking, 23 Phil., 526. That case, however, was reversed in McMicking v. Shields, 238 U.S., 99; 59 Law, ed., 1220; 41 Phil., 971. The petitioner Schields was accused of theft in the municipal court of Manila on December 1, 1910. There he was duly arraigned, tried, convicted, and sentenced. He appealed to the Court of First Instance of Manila on December 21, 1910. On December 23 he received notice that the case would be heard at ten o'clock a.m. on the 24th. When he was arraigned on the last-mentioned date he asked for time in which to answer the complaint, which request was denied by the court, who ordered the clerk to enter on the record that the petitioner pleaded not guilty to the complaint. Thereupon the petitioner's attorney also asked for time in which to prepare a defense, which petition was also denied by the same court. The petitioner's attorney excepted to this ruling and asked that the exceptions, together with the requests of the petitioner which had been denied, be entered on the record. After the trial, during which the accused presented witnesses in his defense, the Court of First Instance found him guilty and sentenced him to four months and one day of *arresto mayor*.
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> This court granted the petition for *habeas corpus* and ordered the discharge of the petitioner from confinement on the ground that under section 30 of General Orders No. 58 the accused, on demand, had the right to at least two days in which to prepare for trial and that the refusal of the time in which to prepare for trial was equivalent to the refusal of a legal hearing. On appeal by the respondent Director of Prisons to the Supreme Court of the United States, the latter reversed the judgment. Said that court:
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> We are unable to agree with the conclusion of the Supreme Court that the judgment pronounced by the Court of First Instance was void and without effect. Under the circumstances disclosed denial of the request for time to

answer and to prepare defense was at most matter of error which did not vitiate the entire proceedings. The cause -admitted to be within the jurisdiction of the court - stood for trial on appeal. The accused had known for weeks the nature of the charge against him. He had notice of the hearing, was present in person and represented by counsel, testified in his own behalf, introduced other evidence, and seems to have received an impartial hearing. There is nothing to show that he needed further time for any proper purpose, and there is no allegation that he desired to offer additional evidence or suffered substantial injury by being forced into trial. But for the sections in respect of procedure quoted from General Order No. 58, it could not plausibly be contended that the conviction was without due process of law. The Court of First Instance placed no purely fanciful or arbitrary construction upon these sections and certainly they are not so peculiarly inviolable that a mere misunderstanding of their meaning or harmless departure from their exact terms would suffice to deprive the proceedings of lawful effect and enlarge the accused * * *"

It will be noted that in said case the fact that the cause stood for trial *on appeal* from the municipal court; that the accused had known for weeks the nature of the charge against him; that he had notice of the hearing, was present in person and represented by counsel, testified in his own behalf, introduced other evidence, and seems to have received an impartial hearing; that there was nothing to show that there was no allegation that he desired to offer additional evidence or suffered substantial injury by being forced into trial - weighed heavily against the pretension of the petitioner that the sentence entered against him was void for lack of due process of law.

There is no analogy between the facts of that case and those of the present case.

A more pertinent and analogous case is that of Johnson v. Zerbst, 304 U.S., 458; 82 Law. Ed., 1461. Johnson was indicted by the grand jury for feloniously uttering, passing, and possessing counterfeit Federal Reserve notes. Upon arraignment, he pleaded not guilty, said that he had no lawyer, and - in response to an injury of the court - stated that he was ready for trial. He did not ask for and was not provided with the assistance of counsel. He was tried, convicted and sentenced to four and one-half years of imprisonment. Subsequently he petitioned for *habeas corpus*. Although the Federal District Court believed that the petitioner was deprived, in the trial court, of his constitutional rights to have the assistance of counsel for his defense, it denied the petition for *habeas corpus*, holding that the proceedings "were not sufficient to make the trial void and justify its annulment in a *habeas corpus* proceeding, but that they constituted trial errors or irregularities which could only be corrected on appeal." The Circuit Court of Appeals affirmed that judgment; but the Supreme Court on *certiorari* reversed it. We quote the pertinent portions of its *ratio decidendi*:

The purpose of the constitutional guaranty of a right to Counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights, and the guaranty would be nullified by a determination than an accused's ignorant failure to claim his rights removes the protection of the Constitution. True, *habeas corpus* cannot be used as a means of reviewing errors of law and irregularities - not involving the question of jurisdiction -occurring during the course of trial; and the "writ of *habeas corpus* cannot be used as a writ of error." These principles, however, must be construed and applied so as to preserve -not destroy - constitutional safeguards of human life and liberty. * * *"

Since the Sixth Amendment constitutionally entitles one charged with crime to the assistance of Counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to a Federal Court's authority to deprive an accused of his life or liberty. When this right is properly waived, the assistance of Counsel is no longer a necessary element of the court's jurisdiction to proceed to conviction and sentence. If the accused, however, is not represented by Counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or liberty. A court's jurisdiction at the beginning of trial may be lost "in the course of the proceedings" due to failure to complete the court - as the Sixth Amendment requires - by providing Counsel for an accused who is unable to obtain Counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by *habeas corpus*. * * * (82 Law. ed., 1467-1468.)

We have already shown that there is no law or precedent which could be invoked to place in doubt the right of the accused to be heard or to present evidence in his defense before being sentenced. On the contrary, the provisions of the Constitution hereinabove cited expressly and clearly guarantee to him that right. Such constitutional right is inviolate. No court of justice under our system of government has the power to deprive him of that right. If the accused does not waive his right to be heard but on the contrary - as in the instant case - invokes that right, and the court denies it to him, that court no longer has jurisdiction to proceed; it has no power to sentence the accused without hearing him in his defense; and the sentence thus pronounced is void and may be collaterally attacked in a *habeas corpus* proceeding.[129]

[129] *Id.* at 530-534.

The Court, however, qualified its judgment by ordering the trial to be re-opened with opportunity for the accused to present his evidence. The Court reasoned that the accused should not be enabled "to secure a greater relief than he could have obtained by appeal, and that in any event he is only entitled to the restoration of the right of which he has been unlawfully deprived, namely, the right to present evidence in his defense."

The dissent in *Abriol* distinguished the facts of the case from those of *Johnson v. Zerbst* which was relied upon by the majority on the following reasoning:

> The case of Johnson v. Zerbst, 304 U.S., 458; 82 Law. ed., 1461, relied on in the majority opinion is hardly applicable to the present case. There the accused was denied his constitutional right to have the assistance of counsel at the trial and the Supreme Court of the United States held that the recognition of that right was a prerequisite of the court's jurisdiction, so that when the right was denied the judgment of conviction was void as having been rendered without jurisdiction. It is obvious that the denial of the right to the assistance of counsel in that case was an error which vitiated the entire proceedings of the trial court and made a new trial inevitable. Annulment of the whole proceedings taken while the accused had no legal counsel was, therefore, proper. In the case at bar, as the majority opinion itself rules, the whole proceedings below did not have to be annulled, so that the case had to be remanded to the trial court for the reception of defendant's evidence. The question of jurisdiction is not at all in issue and seems to have been invoked merely as an excuse to justify recourse to *habeas corpus* as a remedy for correcting a procedural mistake.[130]

The Court in *Abriol* correctly limited the ruling of the United States Supreme Court in the Philippine-derived case of *Schields v. McMicking* to its narrow facts which led to the conclusion that there was actually no denial in that case of the right of the accused to prepare for trial. The statement in the *McMicking* case that if there was such a denial and that it was an erroneous denial the error would have been non-jurisdictional was probably obiter dicta only. Oddly enough, however, it was such obiter which may have led the Court in one case[131] to rule that the erroneous denial of the right of the accused to prepare for trial is not correctible on *habeas* but on appeal.

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[130] *Id.* at 538-539.

[131] People v. Valte, 43 Phil. 907 (1922).

Camasura,[132] it will be recalled, involved convictions through coerced pleas of guilt. The convictions were of course vacated there due to gross denial of due process.

5. Equal Protection

Where the convict was sentenced to a penalty which by later law or doctrine was excessive he may obtain on *habeas* his release from imprisonment after he had served what should have been the lesser but proper penalty. This, it may be recalled, was the ruling in *Gumabon*,[133] on the reasoning that otherwise the convict would be denied the equal protection of the law where other similar convicts enjoyed the benefit of the lesser penalty.

6. Self-incrimination

When the accused was compelled to take the witness stand over his objection, his right against self-incrimination was thereby violated. *In Chavez v. Court of Appeals*,[134] it will be recalled, our Court overturned on *habeas corpus* the judgment of conviction which was infected by this Constitutional rights violation.

G. The United States Federal Position

The range of cognizable claims on *habeas corpus* review in the United States federal courts is definitely much broader than that in this jurisdiction although its exact limits are no more precisely defined.

Until 1963, federal *habeas corpus* review of final judgments of conviction was traditionally placed in terms of jurisdiction or want of jurisdiction of the convicting court. Then, in 1963, the United States Supreme Court, by a 6-3 majority in *Fay v. Noia*,[135] ruled that federal courts may inquire on *habeas corpus* into whether a restraint of liberty is consistent with the Constitution regardless of whether the judgment of conviction was rendered by a court of competent jurisdiction. Since then, *habeas* review was used to overturn a judgment of conviction on the due process claim of insufficient evidence to support it,[136] on an equal protection claim of racial discrimination in selecting a state grand-jury

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[132] *See* n. 69.
[133] *See* text accompanying n. 101-103.
[134] *See* text accompanying n. 63.
[135] 372 U.S. 391, 83.S.Ct. 822, 9 L.Ed.2d 837 (1963).
[136] Jackson v. Virginia, 443, U.S. 307, 99 S.Ct. 2786, 61 L.Ed.2d 560 (1979).

foreman,[137] and on the claim that the conviction rests on evidence obtained through an unconstitutional search or seizure.[138]

Post-conviction review, it may be noted parenthetically, in the United States federal courts is at this time two-pronged. For those in custody under judgments conviction by federal courts, the prisoner may file a petition for *habeas corpus* in the appropriate federal court[139] or a motion under 28 U.S.C. § 2255 (established in 1948) which may be filed "at any time" with the sentencing court to vacate, set aside or correct the sentence.[140] Those held in custody under State court judgments of conviction may of course resort to federal courts for *habeas* relief.[141] The remedy under 28 U.S.C. §2255 is understood to be as broad as *habeas corpus*.[142]

So wide-ranging are the grounds for federal *habeas corpus* review of judgments of conviction today that the United States Supreme Court had itself described this expanded role of *habeas corpus* in these terms:

> The original view of a *habeas corpus* attack upon detention under a judicial order was a limited one. The relevant inquiry was confined to determining simply whether or not the committing court had been possessed of jurisdiction. E.g., Ex parte Kearny, 7 Wheat. 38, 5 L. Ed. 391 (1822); Ex parte Watkins, 3 Pet. 193, 7 L.Ed. 650 (1830). But, over the years, the writ of *habeas corpus* evolved as a remedy available to effect discharge from any confinement contrary to the Constitution or fundamental law, even though imposed pursuant to conviction by a court of competent jurisdiction. See Ex parte Lange, 18 Wall. 163, 21 L.Ed. 872 (1874); Ex parte Siebold, 100 U.S. 371, 25 L.Ed. 717 (1880)" Ex parte Wilson, 114 U.S. 417, 5 S.Ct. 935, 29 L.Ed. 89 (1885); Moore v. Dempsey, 261 U.S. 86, 43 S.Ct. 265, 67 L.Ed. 543 (1923); Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938); and Waley v. Johnston, 316 U.S. 101, 62 S.Ct. 964, 86 L.Ed. 1302 (1942). See also Fay v. Noia, supra, at 405-409 of 372 U.S., 83 S.Ct. at 830-832 and cases cited at 409 n. 17, 83 S.Ct. at 832. Thus, whether the petitioner's challenge to his custody is that the statute under which he stands convicted is unconstitutional,

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[137] Rose v. Mitchell, 443 U.S. 545, 99 S.Ct. 2993, 61 L.Ed.2d 739 (1979).

[138] Withrow v. Williams, 507 U.S. 680, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993).

[139] 28 U.S.C. § 2241 (c) [1], [2].

[140] 28 U.S.C. § 2255.

[141] 28 U.S.C. § 2254.

[142] Davis v. United States, 417 U.S. 373, 94 S.Ct. 2298, 41 L.Ed.2d 109 (1974). This § 2255 remedy was intended to afford some relief to those federal courts that were overburdened with *habeas* petitions resulting from the requirement that petitioners apply for the writ in the district of their confinement. Note, *Federal Collateral Relief From Non-constitutional Errors of Law: The Application of Davis v. United States*, 32 RUTGERS L. REV. 763, 766 (1979). *See, also*, Note, *Section 2255 of the Judicial Code: The Threatened Demise of Habeas Corpus*, 59 YALE L.J. 1183 (1950).

> as in *Ex parte Siebold*, supra; that he has been imprisoned prior to trial on account of a defective indictment against him, as in Ex parte Royall, 117 U.S. 241, 6 S.Ct. 734, 29 L.Ed. 868 (1886); that he is unlawfully confined in the wrong institution, as in In re Bonner, 151 U.S. 242, 14 S.Ct. 323, 38 L.Ed. 149 (1894), and Humphrey v. Cady, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972); that he was denied his constitutional rights at trial, as in *Johnson v. Zerbst*, supra; that his guilty plea was invalid, as in Von Moltke v. Gillies, 332 U.S. 708, 68 S.Ct. 316, 92 L.Ed. 309 (1948); that he is being unlawfully detained by the Executive or the military, as in Parisi v. Davidson, 405 U.S. 34, 92 S.Ct. 815, 31 L.Ed.2d 17 (1972); or that his parole was unlawfully revoked, causing him to be reincarcerated in prison, as in Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) – in each case his grievance is that he is being unlawfully subjected to physical restraint, and in each case *habeas corpus* has been accepted as the specific instrument to obtain release from such confinement.[143]

Well accepted now therefore is the reality that federal *habeas corpus* review has gone substantially beyond review of convictions for jurisdictional defects.[144] Plenary review of constitutional claims on collateral attack by *habeas* is justified as essential to fulfilling the historic function of *habeas corpus* – providing relief against the detention of persons in violation of their fundamental liberties.[145]

The constant changes in the composition of the United States Supreme Court and the shift to greater deference to final judgments of State courts has, however, recently caused the pendulum to swing away from wider federal *habeas* review. For that matter, some amendments had even been made to the federal *habeas* statute so that federal courts may now grant *habeas* relief only if a State court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States."[146] This recent trend towards more restrictive federal *habeas* review of State court judgments of conviction was ushered in by the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA) the impact of which has been assessed in the following review of the 1999 Term of the United States Supreme Court:

> In the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996 Congress imposed major restrictions on state prisoners' ability to raise federal collateral attacks on their convictions. These changes to federal *habeas corpus* proceedings, designed to address the system's "acute problems of unnecessary

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[143] Preiser v. Rodriguez, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed. 439 (1973).
[144] WAYNE LAFAVE AND JEROLD ISRAEL, CRIMINAL PROCEDURE 1017 (Student ed., 1985).
[145] *Id.*, at 1019.
[146] 28 U.S.C. 2254 (d) (I).

> delay and abuse," range from new time limits on the filing of *habeas* petitions to higher thresholds for the granting of evidentiary hearings. In what many legislators considered AEDPA's most important change, the legislation also requires that federal courts show a measure of deference to state courts" applications of federal law. Rather than review state court determinations de novo, as they have in the past, federal courts may now grant *habeas* relief only if a state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." Last Term, in *Williams v. Taylor*, the Supreme Court sought to clarify the level of deference that § 2254 requires. Despite describing § 2254 as very deferential, the Court's application of the statute to the facts at hand demonstrated a stricter approach to *habeas* review than the Act's drafters may have anticipated.[147]

But even before the enactment of AEDPA, the United States Supreme Court has moved towards stricter although ill-defined, shifting standards of federal *habeas* review of State court judgments of conviction especially in capital cases. The following analysis of the recently adopted standards depicts the current United States Supreme Court position:

> The writ of *habeas corpus*, which predates our nation, has traditionally been conceived of as an equitable remedy for prisoners convicted or sentenced in violation of the Constitution. However, in recent years the Supreme Court has consistently denied the writ to convicts who cannot make a "colorable showing of factual innocence." Last Term, in Schlup v. Delo, the Supreme Court reconsidered the issue of when courts must entertain multiple *habeas* petitions by the same defendant. Although the Court correctly attempted to fashion a legal standard that would provide an adequate forum for prisoners making a colorable claim of actual innocence, the Court's unclear statement of that standard fails to offer sufficient guidance to lower courts.
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> On February 3, 1984, an inmate at the Missouri State Penitentiary was stabbed to death. Two corrections officers identified Lloyd Schlup and two other prisoners as the perpetrators. Despite Schlup's claims that the officers had misidentified him and that no physical evidence linked him to the crime, he was convicted and sentenced to death. After exhausting his state collateral remedies, Schlup filed a pro se *habeas* petition in 1989 that alleged, inter alia, that his trial counsel was ineffective because the attorney failed to call alibi witnesses. The District Court for the Eastern District of Missouri held that Schlup's claim was procedurally barred; the Eighth Circuit affirmed on the ground that counsel's performance had not been constitutionally ineffective.

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[147] Note, *The Supreme Court, 1999 Term*, 114 HARV. L. REV. 23 at 319 (2000).

In 1992, Schlup filed a second *habeas* petition that alleged his actual innocence as well as the ineffectiveness of his trial counsel. Without holding an evidentiary hearing, the district court dismissed the petition, finding inadequate justification for Schlup's failure to raise his new claim in the prior petition. Schlup then sought a stay of execution based on his actual innocence. The Eighth Circuit applied the standard announced in *Sawyer v. Whitley*, which held that "to show "actual innocence" one must show by clear and convincing evidence that but for a constitutional error, no reasonable juror would have found the petitioner eligible for the death penalty." The appellate court then denied the stay.

The Supreme Court vacated and remanded. Writing for the majority, Justice Stevens concluded that *Murray v. Carrier*, rather than *Sawyer*, was the proper standard "when the claimed injustice is that constitutional error has resulted in the conviction of one who is actually innocent of the crime. Under *Carrier*, the *habeas* petitioner must demonstrate that "a constitutional violation has probably resulted in the conviction of one who is actually innocent." To meet this burden, Stevens stated, "the petitioner must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence."

The Court explained that "the societal interests in finality, comity, and conservation of scarce judicial resources" weigh against allowing successive or abusive *habeas* petitions. Because Schlup could not show sufficient "cause and prejudice" to excuse his failure to present all his evidence in his first *habeas* petition, he could obtain review "only if he [fell] within the "narrow class of cases ... implicating a fundamental miscarriage of justice." The Court pointed out that actual innocence claims are "extremely rare" and thus place a lesser burden on scarce judicial resources, while "the individual interest in avoiding injustice is most compelling in the context of actual innocence." The majority concluded that "[t]he overriding importance of this greater individual interest merit[ed] protection by imposing a somewhat less exacting standard of proof on a *habeas* petitioner alleging a fundamental miscarriage of justice than on one alleging that his sentence is too severe."

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In contrast, the defendant's interest in having an innocence claim heard is at its strongest in the capital context. It is a "fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." This statement, although made in the context of an ordinary conviction, is all the more powerful in a capital case. The American legal system acknowledges that "[b]ecause of its severity and irrevocability, death as a penalty is qualitatively different from any sentence of imprisonment." Courts should thus be more willing in the capital context to entertain successive

petitions involving new evidence of actual innocence. The actual innocence situation is rare but vitally important and therefore should outweigh the societal interests in finality and conservation of scarce judicial resources.

Nonetheless, the *Schlup* Court's statement of the standard leaves much to be desired. As Chief Justice Rehnquist argued in dissent, *Jackson v. Virginia* provides a clearer and more workable model than either the majority's approach or *Carrier*. The *Jackson* test asks whether an examination of the evidence would allow "any rational trier of fact [to find] the essential elements of the crime beyond a reasonable doubt." Although the *Carrier* test seems similar, its use of the word "probably" makes it less clear as a legal standard. *Jackson's* "reasonable doubt" formulation is plainly stated in terms of a conclusion of law, thereby offering clear guidance to lower courts.

In a case like Schlup's that involves a claim of actual innocence, the court faces the task of determining how the jury would have viewed the newly discovered exculpatory evidence. Although no actual innocence claim or new evidence was presented in *Jackson*, a modification of the *Jackson* standard would be much easier for lower courts to follow than would *Schlup's* confusing restatement of *Carrier*. In adapting *Jackson* to the new context, Chief Justice Rehnquist suggested that a *habeas* judge would be able to dispose of most actual innocence claims on the basis of the parties" written submissions. However, for the minority of prisoners who can make out a substantial claim, the judge should conduct an evidentiary hearing limited to the issue of actual innocence. The court would then be able to evaluate the innocence claim by predicting the effect of the testimony on a reasonable jury.

Despite the Court's attempt to distinguish the two tests, *Schlup's* standard requiring a court to find that "no reasonable juror would have convicted" sounds like a watered-down version of *Jackson*. However, while the *Jackson* approach is based upon reasonable doubt, the *Schlup* Court's approach has no discernible reference point and is likely to cause confusion. Although it correctly notes the factual and legal differences between *Jackson* and *Schlup*, the majority, unlike Chief Justice Rehnquist, fails to recognize how the two cases can be reconciled. In its effort to distinguish the *Jackson* test, the *Schlup* Court needlessly confuses its own test.

In recent decades, the Supreme Court has placed increasingly stringent limits on the availability of the writ of *habeas corpus*. Although finality interests dictate that a capital defendant have only so many chances, many commentators agree that the Court has tipped the balance too far from defendants' and society's shared interest in obtaining accurate outcomes. For the vast majority of defendants who have been convicted in fair trial proceedings, strict limits on the availability of *habeas* review are appropriate. But it is equally important to allow an exception to these strict limits for

> credible claims of actual innocence, because to do otherwise could produce a "fundamental miscarriage of justice." Despite the American public's current clamor for tougher criminal law enforcement, our desire to punish the guilty must not entirely eclipse our interest in protecting the innocent. A decision on a *habeas* petition requires a delicate weighing of the interests in finality and accuracy. In *Schlup v. Delo*, the Supreme Court has finally taken one awkward step toward restoring the rights of actually innocent capital defendants to a proper balance.[148]

VII. CONCLUSIONS AND RECOMMENDATIONS

The case for greater availability of post-conviction review by *habeas corpus* is a stronger one in this jurisdiction than in the United States. We do not have here a dual system of courts as there is in the United States so that comity and deference has to be extended to the judgments of courts which are part of a State's judicial apparatus. The layering of courts is therefore lesser here than in the United States, where the State judgment of conviction goes through the hierarchy of courts in the State judicial system and then all over again through a similar hierarchy in the federal judicial structure. Hence, the need to make a policy choice along lines of having to conserve resources (intellectual, moral and political[149] is not as acute for us. What remains for us to focus on is a definition of the kind of evidentiary showing that has to be made to justify a *habeas* review of a final judgment of conviction.

A clear-cut, easy–to-apply formula is not easy to devise. To be sure, the standard of "lawfulness" or "legality" of the detention is a broad and elastic one. Inquiry into the lawfulness of the detention will necessarily involve a relitigation of issues of law and fact which were already adjudicated in the original proceeding. The dilemma here has been well perceived and articulated as follows:

> [T]he conclusion is inescapable that no detention can ever be finally determined to be lawful; for if legality turns on "actual" freedom from errors of either fact or law, whenever error is alleged the court passing on legality will necessarily have to satisfy itself by determining the merits whether in fact error occurred. After all, there is no ultimate guarantee that *any* tribunal arrived at the correct result; the conclusions of a *habeas corpus* court, or of any number of *habeas* courts, that the facts were X and that on X facts Y law applies are not infallible; if the existence *vel non* of mistake determines the lawfulness of the

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[148] Note, *The Supreme Court, 1994 Term*, 109 HARV. L. REV. 10, 259-269 (1995).
[149] Bator, *supra* note 1, at 451.

> judgment, there can be no escape from a literally endless relitigation of the merits because the possibility of mistake always exists.
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> In fact, doesn't the dilemma go deeper? As Professor Jaffe has taught us, if the lawfulness of the exercise of the power to detain turns on whether the facts which validate its exercise "actually" happened in some ultimate sense, power can never be exercised lawfully at all, because we can never absolutely recreate past phenomena and thus can never have final certainty as to their existence. .... Precisely the same point can be made about rulings of law. Assuming that there "exists," in an ultimate sense, a "correct" decision of a question of law, we can never be assured that any particular tribunal has in the past made it: we can always continue to ask whether the right rule was applied, whether a new rule should not have been fashioned.
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> Surely, then, it is naïve and confusing to think of detention as lawful only if the previous tribunal's proceedings were "correct" in this ultimate sense. If any detention whatever is to be validated, the concept of "lawfulness" must be defined in terms more complicated than "actual" freedom from error; or, if you will, the concept of "freedom from error" must eventually include a notion that some complex of institutional processes is empowered definitely to *establish* whether or not there was error, even though in the very nature of things no such processes can give us ultimate assurances.
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> Our analysis of the purposes of the *habeas corpus* jurisdiction must, thus, come to terms with the possibility of error inherent in any process. The task of assuring legality is to define and create a set of arrangements and procedures which provide a reasoned and acceptable probability that justice will be done, that the facts found will be "true" and the law applied "correct."[150]

A possible solution is that suggested by Judge Henry J. Friendly that some colorable, or perhaps prima facie, showing of the petitioner's innocence must be required before a *habeas* petition may be given due course. This is how Judge Friendly phrased his proposal:

> Legal history has many instances where a remedy initially serving a felt need has expanded bit by bit, without much thought being given to any single step, until it has assumed an aspect so different from its origin as to demand reappraisal – agonizing or not. That, in my view, is what has happened with respect to collateral attack on criminal convictions. After trial, conviction, sentence, appeal, affirmance, and denial of *certiorari* by the Supreme Court, in proceedings where the defendant had the assistance of counsel at every step,

[150] *Id.*, at 446-448.

> the criminal process, in Winston Churchill's phrase, has not reached the end, or even the beginning of the end, but only the end of the beginning. Any murmur of dissatisfaction with this situation provokes immediate incantation of the Great Writ, with the inevitable initial capitals, often accompanied by a suggestion that the objector is the sort of person who would cheerfully desecrate the Ark of the Covenant. My thesis is that, with a few important exceptions, convictions should be subject to collateral attack only when the prisoner supplements his constitutional plea with a colorable claim of innocence.[151]

Judge Friendly's suggested importance of actual innocence has impacted on the United States Supreme Court. Actual innocence "has become more and more central to the Supreme Court's *habeas* jurisprudence in recent years."[152]

Another point worth considering. The jurisdiction to entertain the *habeas* petition should be similar to that fixed in Rule 47 of the 1997 Rules of Civil Procedure, relating to annulment of judgments or final orders and resolutions. Therefore, where the subject of *habeas* review is decision of the Regional Trial Court the petition should be filed with the Court of Appeals, and where the subject is an inferior court's decision the petition should be filed in the appropriate Regional Trial Court. This would avoid the unseemly and anomalous spectacle of having one court review on *habeas* the final judgment of a co-equal and coordinate court.

Our courts should therefore shed off their squeamishness in conducting a *de novo* factual review of the judgment of conviction. The ultimate issue, after all, on *habeas* is the legality of the conviction. This issue of legality cannot be confined to the correctness of the convicting court's rulings on points of law. It is an issue which calls into consideration the correctness as well of its factual findings and as to the fairness of the fact-finding process it followed. But this *de novo* review must be preceded by a showing, similar to that required by 28 U.S.C. § 2254 (d), (e) and (f), that the trial record in the convicting court is not complete and accurate or discloses that the accused did not receive a full and fair hearing. Gross misappreciation of the evidence may qualify as a denial of a fair hearing. A conviction based on grossly insufficient evidence will result in conviction by proof which does not transcend reasonable doubt, and this would be a denial of a Constitutional right of the accused.

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[151] Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. CHI. L. REV. 142 (1970).

[152] Note, *The Supreme Court, 1994 Term*, 109 HARV. L. REV. 10, 260, n. 4 (1999).

Our Supreme Court should, when the occasion presents itself, firmly establish the rule that the correctness and lawfulness of the penalty imposed in the judgment of conviction is reviewable on *habeas*. This issue goes to the core of the legality of the confinement of the *habeas* petitioner. It is an issue that can no more be side-stepped without diluting the efficacy of *habeas corpus* as a mode of post-conviction review. All this talk about jurisdictional and non-jurisdictional errors glosses over the basic issue of legality and possible denial of petitioner's Constitutional rights.

Basic justice should be the central focus of the court on *habeas* review. Was the conviction fair, lawful and correct? If it is not, the only conceivable reason for maintaining it impervious to reversal or correction on *habeas* review is the greater need in the particular case to respect the finality of the judgment of conviction. If the convicting court erred in its appreciation and application of the law or facts, how can it have jurisdiction to convict on that basis? The ultimate determinant therefore may hinge on the grossness of the error and the reasonable opportunity afforded the petitioner to have it corrected before the judgment became final.

Where the judgment of conviction is rooted in, or infected with, the violation of petitioner's Constitutional right, it should be overturned on *habeas* review. No detention or deprivation of liberty can be more unlawful than one under such a vicious judgment. There can, in our unitary judicial system, be no conceivable procedural bar to reversal or modification on *habeas* of such a judgment.

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APPENDIX

28 U.S.C.§§ 2241-2255

Section 2241. Power to grant writ

(a) Writs of *habeas corpus* may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of *habeas corpus* and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of *habeas corpus* shall not extend to a prisoner unless-

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of *habeas corpus* is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

Section 2242. Application

Application for a writ of *habeas corpus* shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.

It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known.

It may be amended or supplemented as provided in the rules of procedure applicable to civil actions.

If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held.

Section 2243. Issuance of writ; return; hearing; decision

A court, justice or judge entertaining an application for a writ of *habeas corpus* shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention. When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

Section 2244. Finality of determination

(a) 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 person pursuant to a judgment of a court of the United States 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*, except as provided in section 2255.

(b)(1) A claim presented in a second or successive *habeas corpus* application under section 2254 that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive *habeas corpus* application under section 2254 that was not presented in a prior application shall be dismissed unless –

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of *certiorari*.

(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

(c) In a *habeas corpus* proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of *certiorari* at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a *habeas corpus* proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of *habeas corpus* shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of *habeas corpus* could not have caused such fact to appear in such record by the exercise of reasonable diligence.

(d)(1)A 1-year period of limitation shall apply to an application for a writ of *habeas corpus* by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court

and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Sec. 2245 . Certificate of trial judge admissible in evidence

On the hearing of an application for a writ of *habeas corpus* to inquire into the legality of the detention of a person pursuant to a judgment the certificate of the judge who presided at the trial resulting in the judgment, setting forth the facts occurring at the trial, shall be admissible in evidence. Copies of the certificate shall be filed with the court in which the application is pending and in the court in which the trial took place.

Section 2246. Evidence; depositions; affidavits

On application for a writ of *habeas corpus*, evidence may be taken orally or by deposition, or, in the discretion of the judge, by affidavit. If affidavits are admitted any party shall have the right to propound written interrogatories to the affiants, or to file answering affidavits.

Section 2247. Documentary evidence

On application for a writ of *habeas corpus* documentary evidence, transcripts of proceedings upon arraignment, plea and sentence and a transcript of the oral testimony introduced on any previous similar application by or in behalf of the same petitioner, shall be admissible in evidence.

Section 2248. Return or answer; conclusiveness

The allegations of a return to the writ of *habeas corpus* or of an answer to an order to show cause in a *habeas corpus* proceeding, if not traversed, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true.

Section 2249. Certified copies of indictment, plea and judgment; duty of respondent

On application for a writ of *habeas corpus* to inquire into the detention of any person pursuant to a judgment of a court of the United States, the respondent shall promptly file with the court certified copies of the indictment, plea of petitioner and the judgment, or such of them as may be material to the questions raised, if the petitioner fails to attach them to his petition, and same shall be attached to the return to the writ, or to the answer to the order to show cause.

Section 2250. Indigent petitioner entitled to documents without cost

If on any application for a writ of *habeas corpus* an order has been made permitting the petitioner to prosecute the application in forma pauperis, the clerk of any court of the United States shall furnish to the petitioner without cost certified copies of such documents or parts of the record on file in his office as may be required by order of the judge before whom the application is pending.

Section 2251. Stay of State court proceedings

A justice or judge of the United States before whom a *habeas corpus* proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the *habeas corpus* proceeding.

After the granting of such a stay, any such proceeding in any State court or by or under the authority of any State shall be void. If no stay is granted, any such proceeding shall be as valid as if no *habeas corpus* proceedings or appeal were pending.

Section 2252. Notice

Prior to the hearing of a *habeas corpus* proceeding in behalf of a person in custody of State officers or by virtue of State laws notice shall be served on the attorney general or other appropriate officer of such State as the justice or judge at the time of issuing the writ shall direct.

Section 2253. Appeal

(a) In a *habeas corpus* proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

(A) the final order in a *habeas corpus* proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

Section 2254. State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of *habeas corpus* in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of *habeas corpus* on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that –

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of *habeas corpus* may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of *habeas corpus* on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on

the merits in State court proceedings unless the adjudication of the claim –

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)(1) In a proceeding instituted by an application for a writ of *habeas corpus* by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that –

(A) the claim relies on –

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

Section 2255. Federal custody; remedies on motion attacking sentence

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.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of *habeas corpus*.

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 has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence. Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain –

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

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