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# Judicial Review of Administrative Action in Florida -- Habeas Corpus

# COMMENTS

## JUDICIAL REVIEW OF ADMINISTRATIVE ACTION IN FLORIDA — WRIT OF HABEAS CORPUS

The writ of habeas corpus, defined by the Supreme Court of Florida,[1] is a high prerogative writ of ancient origin designed to obtain immediate relief from unlawful imprisonment; it is essentially a writ of inquiry[2] and is issued to test the reason or grounds of detention, being recognized as a fundamental guaranty and protection of liberty.[3] The Florida Constitution confers on each Justice of the Supreme Court of Florida the power to issue the writ to any part of the State of Florida and to make the same returnable before himself or the Supreme Court, or before any Circuit Judge.[4] It further grants Circuit Courts the power to issue and hear habeas corpus writs.[5] Upon a denial of a writ of habeas corpus by the Circuit Court, the petitioner may apply directly to the Supreme Court, which will treat the original petition as an application for an original writ.[6]

Judicial decisions of this state notably indicate the importance of exercising extreme caution in granting the discharge from custody by a writ of habeas corpus.[7] This writ of right issues only when there are reasonable grounds for awarding it.[8] Such entitlement is generally predicated upon illegal detention;[9] and if upon the face of the petition it appears that the applicant is lawfully held, and would only be remanded, the writ should be denied in the first instance.[10] However, when public interest is involved, in the application for a writ of habeas corpus, the Supreme Court will in its discretion, protect such interest and issue the writ.[11]

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1 Allison v. Baker, 152 Fla. 274, 11 So. 2d 578 (1943).

2 *Ibid.*

3 See Florida Constitution, Art. V., Sec. 5, 11 and Declaration of Rights, Sec. 9; F.S.A. 79.01 to 79.12.

4 Art. V, Sec. 5 of the Florida Constitution.

5 Art. V, Sec. 11 of the Florida Constitution.

5 Deeb v. Gandy, 110 Fla. 283, 148 So. 540 (1933).

7 Taylor v. Chapman, 127 Fla. 401, 173 So. 143 (1937).

8 Lee v. Van Pelt, 57 Fla. 94, 48 So. 632 (1909).

9 Hancock v. Dupree, 100 Fla. 617, 129 So. 822 (1930), where the court held that the law is not concerned with the illegal detention of a child when a question of custody arises, but rather of the general welfare of the child.

10 Skipper v. Schumacker, 118 Fla. 867, 160 So. 357 (1935).

11 *Ex parte* Powell, 70 Fla. 363, 70 So. 392 (1915).

This venerable writ will not issue under the following circumstances: as a substitute for a writ of error or appeal;[12] where the information does not wholly fail to substantiate an offense under a valid statute;[13] to make inquiry into facts or information of such hearing;[14] to take advantage of defects on warrant or indictment or information which do not go to the very nature of the charge;[15] to test venue where state court records do not affirmatively lack jurisdiction to restrain accused;[16] to test authority of restraint of accused by a federal officer under and by virtue of federal process;[17] or to prevent imprisonment under an indictment charging a criminal offense defectively or artificially[18] since such detention is not completely without jurisdiction.

The right to the writ is recognized by the constitution of this state,[19] and is regulated by statute. Any principles of common law not inconsistent with the constitution or statutory law, may still be followed in this state in appropriate cases.[20] The right of the writ may issue to one who is wrongfully detained or on his behalf, or to one having a right to his custody, and will issue upon informal application.[21]

Among the important uses of the writ of habeas corpus in this state are the following: to determine the validity of a warrant, indictment or information under which the petitioner is held in custody;[22] to contest the constitutionality of a criminal statute,[23] or city ordinance;[24] and is proper in situations where the accused is convicted under a set

12 Lehman v. Sawyer, 106 Fla. 396, 143 So. 310 (1932).

13 Spooner v. Curtis, 85 Fla. 408, 96 So. 836 (1923).

14 State v. Vasquez, 49 Fla. 126, 38 So. 830 (1905).

15 Griswold v. State, 77 Fla. 505, 82 So. 44 (1919), court denied the writ where the indictment though extremely lengthy, filled with unnecessaries did not wholly fail in charging the offense.

16 Patterson v. Christensen, 133 Fla. 816, 183 So. 18 (1938).

17 Passett v. Chase, 91 Fla. 522, 107 So. 689 (1926).

18 State *ex rel.* Linick v. Coleman, 144 Fla. 458, 198 So. 100 (1940).

19 Constitution of Florida, Art. V, Secs. 5, 11 and Declaration of Rights, Sec. 9.

20 Porter v. Porter, 60 Fla. 407, 53 So. 546 (1910).

21 *Ex parte* Amos, 93 Fla. 5, 112 So. 289 (1927).

22 State *ex rel.* Cacciatore v. Drumbright, 116 Fla. 496, 156 So. 721 (1934).

23 *See* note 12 *supra,* court denied writ, where petitioner sought to contest validity of statute which made it unlawful to catch fish with undersized nets in waters off Florida, on grounds that the waters one mile off Miami Beach were not within territorial jurisdiction of State of Florida.

24 *Ex parte* Wise, 141 Fla. 222, 192 So. 872 (1940), court allowed writ, where petitioner sought to contest the validity of a zoning ordinance permitting reclassification, and upon the zoning boards reclassifying petitioner's property, reversed its decision subsequent to petitioner's erection of a building in question,

of facts constituting no offense under the law;[25] the sole question being not the set of facts, but whether the ordinance or statute is bad.[26] Where originally the restraint was justified, but due to matters ex post facto has become illegal, the writ will issue.[27] In general there must be some illegality or want of jurisdiction.[28] An excess of jurisdiction, such as an unauthorized sentence being void,[29] may be collaterally attacked through the writ. It has been successfully used to determine the validity of an arrest and physical detention for a violation of a conditional pardon.[30] Efficacy of the writ in contempt proceedings in challenging the validity of such judgment is restrained to a showing of an illegal adjudication only where it is unequivocal that the judgment was arbitrary and capricious.[31]

One of the more important uses of the writ is found in resisting extradition proceedings.[32] In these proceedings a court may inquire whether the petitioner was actually charged with a crime in the demanding state, but may not inquire if the indictment in that state is subject to demurrer.[33] It may take into account the running of the statute of limitations of the demanding state to determine if the prisoner is a fugitive from justice.[34]

A further use of the writ is found in procuring the reduction of bail where the amount set is too excessive;[35] and where bail is denied and it is sought to admit the prisoner to bail.[36] The Florida Constitution[37] provides that the defendant charged with capital crime shall be admitted to bail unless the charge or presumption be great against the defendant.

Of importance with the increasing divorce rate would seem to be the use of the writ in situations where the adverse parent or party as cus-

25 Farrior v. State *ex rel.* Compton, 152 Fla. 754, 13 So. 2d 147 (1943).

26 *See* note 11 *supra.*

27 Johnson v. Lindsey, 89 Fla. 143, 103 So. 419 (1925), court granted the writ where the petitioner was restrained after having served his sentence.

28 State *ex rel.* Grebstein v. Lehman, 100 Fla. 481, 129 So. 818 (1930).

29 McDonald v. Smith, 68 Fla. 77, 66 So. 430 (1914), court granted the writ to attack a judgment of the criminal court of record, which imposed a sentence to ". . . Serve hard labor on the county road . . . ", where the said court was without authority, and an affirmance by the circuit court was said to give no validity to the judgment.

30 Sellers v. Bridges, 153 Fla. 586, 15 So. 2d 293 (1943).

31 Richey v. McLeod, 137 Fla. 281, 188 So. 228 (1939).

32 Kuney v. State, 88 Fla. 354, 102 So. 547 (1924).

33 Kurtz v. State, 22 Fla. 36 (1886).

34 State *ex rel.* Huston v. Clark, 121 Fla. 161, 163 So. 471 (1935).

35 *Ex parte* Jones v. Cunningham, 126 Fla. 333, 170 So. 663 (1936). Court granted writ where bail was set at $20,000 for a negro of poor means, and where he was entitled to bail.

36 *Ex parte* Hatcher, 86 Fla. 330, 98 So. 72 (1923).

37 *Ibid.* Constitution of Florida, Declaration of Rights, Secs. 7, 8, and 9.

todian of the child in an equity proceeding, seeks thereafter to exert illegal detention or retention over the child. It becomes incumbent upon the court to determine its future custody while keeping paramount the welfare of the minor.[38] The court in using the writ for this purpose endeavors to adhere to modern equitable principles.[39]

Applications and proceedings of the writ are regulated by statute.[40] A judgment is res judicata in a subsequent proceeding regarding the same issues and parties.[41]

In conclusion, the writ of habeas corpus is designed for the purpose of effecting a speedy release of persons who are illegally deprived of their liberty or illegally detained from the control of those who are entitled to their custody.[42]

38 State *ex rel.* Weaver v. Hamans, 118 Fla. 230, 159 So. 31 (1935).

39 *See* note 20 *supra.*

40 F.S.A. 79.01.

41 State *ex rel.* Williams v. Prescott, 110 Fla. 261, 148 So. 533 (1933).

42 State *ex rel.* Price v. Stone, 128 Fla. 637, 175 So. 229 (1937).

## ESTATES BY THE ENTIRETY: BANK DEPOSIT BY HUSBAND AND WIFE

Florida recognizes in the surviving spouse the right of survivorship to the balance of a joint bank deposit in the names of husband and wife.[1] Under the pertinent Florida statute, an estate by the entirety is a specific exception to the rule that the right of survivorship in cases of real estate and personal property held by joint tenants shall not prevail in Florida.[2]

The rights of each spouse are determined as of the date of the joint deposit; thus, the funds of said deposit are not subject to execution for the debts of the deceased mate, to partition, to devise by will, or to the laws of descent and distribution.[3]

These views, prevailing in Florida, are in accord with the weight of authority.

In Pennsylvania, a deposit of money in a joint account of husband and wife presumptively creates a tenancy by entireties, no agreement between the spouses or independent evidence of transfer being neces-

1 Stanley v. Powers, 123 Fla. 359,166 So. 843 (1936); Bailey v. Smith, 89 Fla. 303,103 So. 833 (1925).

2 F.S.A. Sec. 689.15; Menendez v. Rodriguez, 106 Fla. 214, 143 So. 223 (1932).

3 Hunt v. Covington, 145 Fla. 706,200 So. 76 (1941); Richardson v. Grill, 138 Fla. 787,190 So. 255 (1939).