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OF THE

STATE OF MAINE

1954

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Chapter 126.

Habeas Corpus. Bail Commissioners.

Sec. 1. Right to writ.

Editor's note. — The case of Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352, from which the following notes were taken, was decided prior to the enactment of §§ 1-A to 1-G of this chapter providing for post conviction habeas corpus proceedings.

Habeas corpus is an action of limited application and its functions must not be broadened to cover matters not contained within the restricted area of its use. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

It is not a substitute for a motion to quash or writ of error. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

Nor can it be used instead of an appeal process. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

If the court has jurisdiction over the person and the offense, habeas corpus will not lie. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

Even though sentence is excessive or otherwise erroneous.—If a court has jurisdiction of the person and cause, the fact that the sentence is excessive or otherwise erroneous is not ground for discharge on habeas corpus. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

As merely voidable proceedings are not reached by habeas corpus.—A writ of habeas corpus cannot reach errors or irregularities which render proceedings voidable merely, but only such defects in substance as render the judgment or process absolutely void. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

Sufficiency of indictment or information.—An indictment or information charging an offense in the language, or substantially in the language, of the statute is not subject to attack on habeas corpus. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

Sec. 1-A. Post conviction habeas corpus.—Any person convicted of a crime and incarcerated thereunder including any person committed as a juvenile offender, or released on probation, or paroled from a sentence thereof, or fined, who claims that he is illegally imprisoned, or that there were errors of law of record, or that his sentence was imposed on violation of the Constitution of the United States or of this state, or that there were errors of fact not of record which were not known to the accused or the court and which by the use of reasonable diligence could not have been known to the accused at the time of trial and which, if known, would have prevented conviction, may institute a petition for a writ of habeas corpus seeking release from an illegal imprisonment, correction of an error of law of record, or to set aside the plea, conviction and sentence, provided that the alleged error has not been previously or finally adjudicated or waived in the proceeding resulting in the conviction or in any other proceding that the petitioner has taken to secure relief from his conviction.

The remedy of habeas corpus provided in sections 1-A to 1-G is not a substitute for nor does it affect any remedies which are incidental to the proceedings in the trial court, or any remedy of direct review of the sentence or conviction but, except as otherwise provided in sections 1-A to 1-G, it comprehends and takes the place of all other common law remedies which have heretofore been available for challenging the validity of a conviction and sentence and shall be used exclusively in lieu thereof. A petition may be filed at any time after the criminal conviction is final. (1963, c. 310, § 1.)

Sec. 1-B. Jurisdiction; commencement of proceedings; filing of petition; verification; docketing; service of copies; amendments.—The proceeding shall be commenced by filing with the clerk of the superior court in the county where the conviction took place an original petition and 2 copies thereof, addressed to the superior court which shall have jurisdiction thereof. Facts within the personal knowledge of the petitioner and the authenticity of all documents and exhibits included in or attached to the petition must be sworn to affirmatively as

true and correct. The clerk shall enter the petition on the docket upon its receipt and bring it forthwith to the attention of the chief justice of the supreme judicial court and to the attorney general by sending to each of them a copy of the petition. The chief justice shall promptly assign the matter to a justice of the superior or supreme judicial courts. Such petition, while pending, and for cause shown may be amended. Amendments when allowed shall be filed in the same manner as an original petition. The supreme judicial court may by rule provide for the form of the petition, verification and writ. (1963, c. 310, § 1.)

Sec. 1-C. Contents of petition.—The petition shall identify the proceedings in which the petitioner was convicted, give the date of the entry of judgment and sentence complained of, specifically alleging valid facts that set forth grounds upon which the petition is based without employment of characterization or language which is scurrilous. The petition shall identify any previous proceedings that the petitioner has taken to secure relief from his conviction, setting forth the type of action, date, forum and the result. Argument, citations and discussion of authorities shall be omitted from the petition, but may be filed as separate documents. (1963, c. 310, § 1.)

Sec. 1-D. Further pleadings and procedure.—Within 20 days after a copy of the petition has been received by the attorney general from the clerk of courts, or within such lesser or further time as the justice to whom the matter has been assigned may fix, the state shall respond by answer, motion or notice that the state does not contest the petition. Thereafter such justice may order a hearing on the motion or issue a writ notifying the petitioner and the attorney general of the time and place of hearing. The hearing on the motion or writ may be ordered held in any county in the state. Such justice may grant leave at any time prior to entry of judgment to withdraw the petition. Such justice shall make such order after consideration of the petition or after hearing as he deems appropriate to his findings in the case, including, but not limited to, the release of the petitioner, corrections in error of law appearing on the face of the record, resentencing, or remanding for resentencing if an erroneous or illegal sentence be found to have been entered, setting aside the plea, conviction and sentence. The order or judgment making final disposition of the petition or writ shall constitute a final judgment for the purpose of review. Such justice may make such order as the case requires for the custody of the petitioner pending hearing and judgment or for admitting him to bail. (1963, c. 310, § 1.)

Sec. 1-E. Appointment of counsel for indigent petitioners.—Such justice may appoint an attorney for an indigent petitioner when a petitioner so requests upon a determination that the petition is filed in good faith, has merit or is not frivolous. If the justice finds that the petitioner has financial means with which to employ counsel, or if he finds that the petition is frivolous or without merit or filed in bad faith, the request for appointment of counsel shall be denied and the justice shall file a decree setting forth his findings and his decision thereon shall be final. (1963, c. 310, § 1.)

Sec. 1-F. Waiver of grounds for relief not claimed; effect of prior petition for writ of coram nobis or error.—All grounds for relief claimed by a petitioner under this remedy must be raised by a petitioner in his original or amended petition, and any grounds not so raised are waived unless the state or federal constitution otherwise requires or any justice on considering a subsequent petition finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition. A petitioner who has previously entered a petition under the Revised Statutes of 1954, chapter 126-A or under chapter 129, sections 11 and 12 shall not be granted the writ under this remedy unless the court on considering the petition finds grounds for relief

asserted therein which could not reasonably have been raised in said previous petition. (1963, c. 310, § 1.)

Editor's note.—Chapter 126-A and c. 129, §§ 11 and 12, referred to in this section, were repealed by P. L. 1963, c. 310, §§ 5, 6.

Sec. 1-G. Review of final judgment; release on recognizance pending appeal.—A final judgment entered under section 1-D may be reviewed by the supreme judicial court sitting as a law court in an appeal brought by the petitioner or the state in the same mode and scope of review as any civil action.

If the justice upon hearing determines that the petitioner should be immediately discharged, pending review of a decision discharging a petitioner, said petitioner shall be enlarged upon recognizance, with surety, for his appearance to answer and abide by the judgment in the appellate proceedings; and if in the opinion of the justice rendering the decision surety ought not to be required the personal recognizance of the prisoner shall suffice. (1963, c. 310, § 1.)

Sec. 4. Courts may grant writ, on application, in behalf of one incapable of applying.—The supreme judicial court or the superior court or any justice of either of said courts, on application of any person, may issue the writ of habeas corpus to bring before them any party alleged to be imprisoned or restrained of his liberty but not convicted and sentenced, who would be entitled to it on his own application, when from any cause he is incapable of making it. (R. S. c. 113, § 4. 1963, c. 310, § 2.)

Effect of amendment.—The 1963 amendment inserted "but not convicted and sentenced."

Sec. 5. Persons not entitled of right.—The following persons shall not of right have such writ:

I. Persons committed to jail for certain offenses. Persons committed to or confined in prison or jail on suspicion of treason, felony or accessories before the fact to a felony, when the same is plainly and specifically expressed in the warrant of commitment.

II. Persons committed on civil process. Persons committed in execution of civil legal process or on mesne process on any civil action on which they are liable to be arrested or imprisoned. (R. S. c. 113, § 5. 1963, c. 310, § 3.)

Effect of amendment.—The 1963 amendment rewrote subsections I and II.

Sec. 29. Persons discharged on habeas corpus, not rearrested.—No person discharged by habeas corpus, except as provided in sections 1-A to 1-G, shall be again imprisoned or restrained for the same cause, unless indicted therefor, convicted thereof or committed for want of bail; or unless, after a discharge for defect of proof or some material defect in the commitment in a criminal case, he is arrested on sufficient proof and committed by legal process for the same offense. (R. S. c. 113, § 29. 1963, c. 310, § 4.)

Effect of amendment.—The 1963 amendment inserted "except as provided in sections 1-A to 1-G."

Sec. 34. Bail commissioners appointed by court.—The superior court sitting in each county shall appoint from the number of justices of the peace resident in the county, one or more bail commissioners, who shall hold office during the pleasure of the court. All bail commissioners acting under an appointment by a justice of the supreme judicial court shall continue in office during the pleasure of the superior court. (1963, c. 402, § 204.)

Effect of amendment.—The 1963 amendment deleted the former last sentence in the section.

Application of amending act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district

court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Sec. 35. Commissioners admit to bail persons committed for not finding sureties.—When a person is confined in a jail for a bailable offense or for not finding sureties on a recognizance, except when a verdict of guilty has been rendered against him for an offense punishable in the state prison and except when such person is committed pending decision on report or exceptions as provided in chapter 148, section 29 any such commissioner, on application, may inquire into the case and admit him to bail and exercise the same power as any justice of the supreme judicial court or superior court can; and may issue a writ of habeas corpus and cause such person to be brought before him for this purpose, and may take such recognizance. During a term of the superior court, a bail commissioner is not authorized to admit to bail any person confined in jail or held under arrest by virtue of a precept returnable to said term. When a person is confined in jail for a bailable offense or for not finding sureties on a recognizance and the amount of his bail has been fixed by a justice of the supreme judicial court or of the superior court or by a judge of the district court, a bail commissioner is not authorized to change the amount of such bail. Such bail commissioner shall receive not exceeding the sum of $5 in each case in which bail is so taken, the same to be paid by the person so admitted to bail; but the person admitted to bail shall not be required to pay any other fees or charges to any officer for services connected with the giving of such bail; provided, however, that if a bail commissioner takes bail after 8:00 P. M. and prior to 8:00 A. M. of the following day he shall be permitted to receive a charge of up to $10 for the occasion of taking such bail, but said charge shall not be in addition to the charge in each case otherwise authorized in this section but shall be inclusive of such charge or charges.

(1955, c. 356. 1963, c. 402, § 205.)

Effect of amendments. — The 1955 amendment added the proviso at the end of the first paragraph.

The 1963 amendment divided the former first sentence into three sentences, substituted "chapter 148, section 29" for "section 29 of chapter 148" in the present first sentence and substituted "judge of the district court" for "judge or recorder of a municipal court" in the present third sentence.

As the second paragraph was not changed by the amendments, it is not set out.

Application of 1963 amending act.—See note to § 34.

Sec. 35-A. Surety bonds authorized in criminal cases.—In any criminal proceeding or mesne process or other process where a bail bond recognizance or personal sureties or other obligation is required, or whenever any person is arrested and is required or permitted to recognize with sureties for his appearance in court, the court official or other authority authorized by law to accept and approve the same shall accept and approve in lieu thereof, when offered, a good and sufficient surety bond duly executed by a surety company authorized to do business in this state. (1959, c. 143, § 2.)

Sec. 38. Habeas corpus may issue on application in behalf of mentally ill person.—When a mentally ill person is arrested or imprisoned on mesne process or execution in a civil action, a justice of the supreme judicial court or of the superior court or the judge of probate within his county, on application, may inquire into the case; issue a writ of habeas corpus; cause such person to be brought before him for examination; and after notice to the creditor or his attorney, if either is living in the state, and a hearing, if it is proved to the satisfaction of said justice or judge that the person is mentally ill, he may discharge him from arrest or imprisonment; and the creditor may make a new arrest on the same demand when the debtor becomes of sound mind. If he is arrested on the same demand a second time before he becomes of sound mind

and is again discharged for that reason, he is forever after exempt from arrest for the same cause. (R. S. c. 113, § 38. 1961, c. 317, § 448.)

Effect of amendment.—The 1961 amendment substituted "a mentally ill person" for "an insane person" and "action" for "suit" near the beginning of this section and also substituted "mentally ill" for "insane" near the end of the first sentence.

Chapter 126-A.

Coram Nobis.

Secs. 1-7. Repealed by Public Laws 1963, c. 310, § 5.

Editor's note.—The repealed sections, which derived from P. L. 1961, c. 131, related to coram nobis proceedings. For present provisions re post conviction habeas corpus proceedings, see c. 126, §§ 1-A to 1-G.

Chapter 127.

Writ of Audita Querela.

Secs. 1-7. Repealed by Public Laws 1959, c. 317, § 279.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Chapter 128.

Writ for Replevying a Person.

Sec. 1. Persons entitled to writ, and from what court.—If any person is imprisoned, restrained of his liberty or held in duress, unless by a lawful writ, warrant or other process, civil or criminal, he may have the writ for replevying the person, on complaint filed by himself or anyone in his behalf in the superior court, at the discretion of the court and not otherwise. (R. S. c. 115, § 1. 1961, c. 317, § 449.)

Effect of amendment.—Prior to the 1961 amendment this section provided for issuance of the writ, on application, by a justice of the superior court in term time or vacation.

Sec. 9. If plaintiff produced.—If the defendant, after the return of eloignment, produces the body of the plaintiff in court, the court shall deliver him from imprisonment, upon his giving the defendant such bond as hereinbefore in this chapter directed to be taken by the officer when the plaintiff is delivered by him; and for want thereof, he shall be committed to abide the judgment on the writ for replevying the plaintiff; and, in either case, the action shall be tried as aforesaid. (R. S. c. 115, § 9. 1961, c. 317, § 450.)

Effect of amendment.—The 1961 amendment substituted "action" for "suit" near the end of this section.