CHAPTER 589

HABEAS CORPUS

589.01 WRIT OF HABEAS CORPUS; WHO MAY PROSECUTE.

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2. Competent tribunal

Section 610.10 directing the district court not to try a person for crime while he is in a state of insanity, imposes a duty on but does not go to the jurisdicion of the court; a failure to comply with the statute is no ground for collateral attack as by habeas corpus on the judgment of conviction. State ex rel v Utecht, 203 M 448, 281 NW 775.

In ascertaining a jurisdictional fact, the court may pursue its inquiry through the record of the proceedings, and where the court is one of general jurisdiction, habeas corpus can be invoked only where lack of jurisdiction appears on the face of the record. State ex rel v Utecht, 220 M 431, 19 NW(2d) 706.

An allegation and a petition for a writ of habeas corpus that two criminal informations were based on exactly the same facts is not an allegation of a conclusion of law but one of fact, the admission of which, by the state, constitutes the truth of the statement except insofar as the truth of the statement in the petition is contradicted by the copies of the informations thereto attached. A plea of former conviction or acquittal for the same offense raises an issue of fact of which the trial court has jurisdiction. An application for a writ of habeas corpus is an independent proceeding to enforce a civil right and is a collateral attack upon a criminal judgment; and an application for a writ of habeas corpus may not be used as a substitute for a writ of error, or appeal, as a cover for a collateral attack upon a judgment of a competent tribunal having jurisdiction of the subject matter of the offense and of the person of the defendant; and the fact that the petitioner has permitted the time to lapse within which a review by appeal may be obtained and has thereby lost the opportunity for such review, give him the right to resort to habeas corpus as a substitute. State ex rel Dunlap v Utecht, 206 M 42, 287 NW 229.

Where on the face of an application for assignment of counsel to represent relator in the supreme court on an appeal from an order discharging a writ of habeas corpus it appears the appeal is frivolous, the supreme court will not ask a member of its bar to contribute his services to relator on such appeal. The proceeding by writ of habeas corpus is not a criminal prosecution but an independent proceeding to enforce a civil right of the relator. It may not be used as a substitute for a writ of error on appeal. State ex rel v Utecht, 218 M 554, 16 NW(2d) 750.

Habeas corpus may not be used as a substitute for appeal or as a cover for a collateral attack upon a judgment of a competent tribunal which had jurisdiction of the subject matter and of the person of the defendant. State v Utecht, 221 M 145, 21 NW(2d) 329.

In a trial for sodomy the state trial court ordered the court room cleared during the testimony of the complaining witness, a girl aged 13. Defendant was represented by counsel, and no exception was taken to the clearing of the court room and no appeal was taken from the judgment of conviction. Much later the prisoner applied to the district court of Washington county for a writ of habeas corpus, which was denied. On appeal to the supreme court a motion to quash was sustained. The federal court declined to issue a writ to determine whether there was such denial of a public trial as to make the conviction invalid and subject to collateral attack. Baker v Utecht, 161 F(2d) 304.

Where one was indicted under the Dyer Act, and his attorney advised him that if he would waive his planned defense of insanity and plead guilty he would receive a one-year sentence, on being sentenced to three years he cannot obtain relief under a writ of habeas corpus. Such writ may not be used as a substitute for a writ of error on appeal. Helms v Humphrey, 63 F. Supp. 4.

4. Scope of relief

A commutation issued to the petitioner in the instant case was conditioned upon his living a law-abiding life and in the event of a breach of its conditions the pardon board reserved to itself the right to revoke the commutation and cause the petitioner to be remanded to serve the remainder of his sentence. These conditions were in the commutation when it was executed by the pardon board and accepted by the petitioner. Under such reservation the pardon board has authority to revoke the commutation without notice and without hearing. Absent such reservation of the right to revoke, the petitioner is entitled to a hearing to refute the charge that he has violated the conditions of his pardon, and a hearing upon a return to a writ of habeas corpus satisfies such requirement. Guy v Utecht, 216 M 255, 12 NW(2d) 753.

6. Evidence

The statute making it an offense to knowingly and wilfully present false claims against the United States, insofar as it relates to income tax evasion, would not be construed as impliedly repealed by subsequent provisions of revenue code defining offenses of income tax evasion. In re Berkoff, 65 F. Supp. 976.

8. Renewed applications

In view of the fact that a special appeal statute covering habeas corpus provides for trial de novo in the supreme court, basis of common law doctrine permitting a renewal of the petition on the same set of facts no longer exists, and the doctrine of res judicata applies. State v Utecht, 220 M 431, 19 NW(2d) 706.

589.02 PETITION; TO WHOM AND HOW MADE.

Applications for habeas corpus by one detained under state court judgment of conviction will be entertained by the federal court only after all state remedies available, including all appellate remedies in state court and in United States Supreme Court by appeal or writ of certiorari, have been exhausted. Guy v Utecht, 114 F(2d 913; 54 F. Supp. 287.

589.04 STATEMENTS IN PETITION.

Solely for the purpose of testing their sufficiency in law, a demurrer admits the material or issuable facts well pleaded. The same is true of a motion to quash; and a motion to quash a writ amounts to a demurrer to the petition. State ex rel v Utecht, 220 M 431, 19 NW(2d) 707.

A motion to quash a writ admits all the facts alleged in the petition. Such motion to quash will not be granted unless it is clear from the petition that petitioner cannot obtain release but must be remanded even after hearing. The petition must be liberally construed in favor of the liberty of the citizen. (See cases cited.) State v Utecht, 221 M 145, 21 NW(2d) 330.

Questions reviewable on habeas corpus for discharge from imprisonment under sentence on conviction of crime are (1) whether the trial court had jurisdiction of the crime and the petitioner, (2) whether the sentence was authorized by law, and, (3) whether the petitioner was denied fundamental constitutional rights. Willoughby v Utecht, 223 M 572, 27 NW(2d) 779.

589.08 RETURN TO WRIT.

A motion to quash a writ of habeas corpus serves only four purposes: (1) To set aside a writ obtained through fraud; (2) to determine whether there has been substantial compliance with the procedural requirements of the statute governing the issuance of the writ; (3) to determine if matter is res judicata; and, (4) to serve as a demurrer to test the sufficiency of the allegations of relator's petition. State v Utecht, 221 M 145, 21 NW(2d) 330.

Where a prisoner at Sandstone prosecutes a writ against the warden, the various issues under which the relief is asked should have been presented to the trial court by motion to vacate or correct the sentence on the ground of illegality, and cannot be raised in a court of coordinate jurisdiction by collateral attack. Berkoff v Humphrey, 159 F(2d) 5.

589.12 PROCEEDINGS ON RETURN OF WRIT.

The natural parents of a child have the first right to its care and custody unless the best interests of the child require that it be given to someone else. The presumption is that the parents are fit and suitable persons to be entrusted with the care of their child, and the burden is on him who asserts the contrary to prove it by satisfactory evidence. In proceedings in habeas corpus in the instant case the presumption as to the parents' fitness to have the care of their child is not overcome, nor does the evidence require a finding that the best interests of the child will be served with leaving her with the grandparents. State ex rel v Sorenson, 208 M 226, 293 NW 241.

In habeas corpus proceedings the evidence supports the finding that the mother is not a fit and proper person to have the custody and care of the child, but that respondent, the father of the child, is a fit and capable person to have such care and custody of the child on the terms and conditions decreed by the district court. State ex rel v Price, 211 M 565, 2 NW(2d) 39.

See, Guy v Utecht, 216 M 255, 12 NW(2d) 753, noted under section 589.01.

Relator, having served his full terms as reduced by his good behavior allowance, may apply for release through a writ of habeas corpus. State v Reed, 146 M 149, 177 NW 1021.

589.14 PRISONER REMANDED, WHEN.

See, Guy v Utecht, 216 M 255, 12 NW(2d) 753, noted under section 589.01.

In the absence of extraordinary circumstances making the trial a mere sham or pretense rather than a real judicial proceeding, habeas corpus will not lie on the ground that the judgment is a nullity for want of due process even where, as here, there is a claim of denial of constitutional rights. State ex rel v Utecht, 218 M 556, 16 NW(2d) 750.

Where the accused enjoys the benefit of competent counsel, the right of the accused to a public trial is not necessarily infringed when the trial court for good reasons temporarily excludes part of the public from the trial, but the exercise of such discretion by the court must be exercised with such degree of caution as not to deprive the accused of the presence, aid, or counsel of any person who would be of advantage to him. State v Utecht, 221 M 145, 21 NW(2d) 332.

Petitioner was represented by counsel before the trial court. Where evidence was neither offered nor introduced to prove facts asserted as grounds for an attack upon the sentence under which the petitioner is imprisoned, no legal questions are raised with respect to such grounds of attack. Willoughby v Utecht, 223 M 572, 27 NW(2d) 780.

589.29 APPEAL TO SUPREME COURT.

Where on the face of an application for an assignment of counsel to represent relator in the supreme court on an appeal from an order discharging a writ of habeas corpus, it appears that the appeal is frivolous, the supreme court will not ask a member of its bar to contribute his services to relator upon such appeal. State ex rel v Utecht, 218 M 553, 16 NW(2d) 750.

In view of the fact that a special appeal statute covering habeas corpus has been enacted in this state, which statute also provides for a trial de novo in the supreme court, basis of the common-law doctrine permitting a renewal of the petition on the same set of facts no longer exists, and the doctrine of res judicata applies. State v Utecht, 220 M 431, 19 NW(2d) 706.

589.30 HEARING ON APPEAL.

In view of the fact that a special appeal statute covering habeas corpus provided for trial de novo in the supreme court, basis of common-law doctrine permitting a renewal of the petition on the same set of facts no longer exists, and the doctrine of res judicata applies. State v Utecht, 220 M 431, 19 NW(2d) 706.