In Re Bonner

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Appeal No. : 151 U.S. 242

Appellant : In Re Bonner

Judgement :

In re Bonner - 151 U.S. 242 (1894)
U.S. Supreme Court In re Bonner, 151 U.S. 242 (1894)

In re Bonner

No. 8, Original

Argued November 27-28, 1893

Decided January 15, 1894

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ORIGINAL

SYLLABUS

When a person accused of crime is convicted in a court of the United States and is sentenced by the court, under Rev.Stat. 5356, to imprisonment for one year and the payment of a fine, the court is without jurisdiction to further adjudge that that imprisonment shall take place in a state penitentiary under Rev.Stat. 5546, and the prisoner, if sentenced to be confined in a state penitentiary, is entitled to a writ of habeas corpus directing his discharge from the custody of the warden of the state penitentiary, but without prejudice to the right of the United States to take any lawful measures to have the petitioner sentenced in accordance with law upon the verdict against him.

Where a conviction is correct, and where the error or excess of jurisdiction is the ordering the prisoner to be confined in a penitentiary where the law does not allow the court to send him, there is no good reason why jurisdiction of the prisoner should not he reassumed by the court that imposed the sentence in order that its defect may be corrected.

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The court discharging the prisoner in such case on habeas corpus should delay his discharge for such reasonable time as may be necessary to have him taken before the court where the judgment was rendered, in order that the defects in the former judgment for want of jurisdiction, which are the subjects of complaint, may be corrected.

The petitioner, John Bonner, a citizen of the United States, represents that he is now and has been since the 23d of May, 1893, unlawfully deprived of his liberty by one P. W. Madden, as warden of the penitentiary of Iowa situated in Anamosa, in that state. He sets forth as the cause of his restrain and detention that at the October term, 1892, of the United States Court for the Third Judicial Division of the Indian Territory, he was indicted for the larceny, in May previous, in the Chickasaw Nation, within the Indian Territory, of four head of cattle, of the value of fifty dollars, the property of one Robert Williams, who was not a member of any Indian tribe; that during that month, he was arraigned before the same court and pleaded not

guilty to the indictment, and was tried and found guilty. The statute under which the indictment was found is contained in section 5356 of the Revised Statutes, and is as follows:

"Every person who, upon the high seas, or in any place under the exclusive jurisdiction of the United States, takes and carries away, with intent to steal or purloin, the personal goods of another shall be punished by a fine of not more than one thousand dollars, or by imprisonment not more than one year, or by both such fine and imprisonment."

The court, by its judgment, sentenced the petitioner to imprisonment in the penitentiary at Anamosa, in the State of Iowa, for the term of one year, and to the payment of a fine of $1,000. It also added that the marshal of the court, to whose custody he was then committed, should safely keep and convey the petitioner, and deliver him to the custody of the warden of the penitentiary, who would receive and keep him in prison for the period of one year in execution of the sentence. The petitioner also sets forth that the warden of the penitentiary has no other authority to hold him than the said judgment and order of commitment.

The petitioner alleges that the said sentence and order of commitment are void; that the court was without power or jurisdiction under the law to render the judgment, and that he had applied to the United States judge of the Northern District of Iowa for a writ of habeas corpus to be released from confinement, and that the writ was denied to him. He

therefore prays that this Court will issue the writ of habeas corpus to the said warden to appear before this Court and show what authority, if any, he has for restraining the petitioner of his liberty, and that upon final hearing he may be discharged.

An order was issued from this Court in October last to the warden to show cause why the writ should not be granted as prayed. The warden returns answer that he holds the prisoner by virtue of a warrant of commitment issued upon the judgment

and sentence of the United States court as above stated, of which a copy is annexed to the petition, and that at the time of the petitioner's conviction and of the judgment and sentence, there was no penitentiary or jail suitable for the confinement of convicts, or available therefor, in the Indian Territory, and that the state penitentiary at Anamosa had been duly designated by the Attorney General, under section 5546 of the Revised Statutes of the United States, as the place of confinement for prisoners convicted of crime by that court, and that the order of the court for the confinement of the petitioner in that penitentiary under its sentence of imprisonment was in pursuance of that designation.

So much of section 5546 of the Revised Statutes as bears upon the question under consideration in this case is as follows:

"All persons who have been or who may hereafter be convicted of crime by any court of the United States whose punishment is imprisonment in a district or territory where, at the time of conviction, there may be no penitentiary or jail suitable for the confinement of convicts or available therefor shall be confined during the term for which they have been or may be sentenced in some suitable jail or penitentiary in a convenient state or territory, to be designated by the Attorney General, and shall be transported and delivered to the warden or keeper of such jail or penitentiary by the marshal of the district or territory where the conviction has occurred. "

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MR. JUSTICE FIELD, after stating the facts in the foregoing language, delivered the opinion of the Court.

The petitioner asks for the issue of the writ of habeas corpus in order that he may be thereby set at liberty, on the ground that his imprisonment in the penitentiary at Anamosa, in Iowa, is in pursuance of a judgment of a court which possessed no authority under the law to pass sentence upon him of imprisonment in the state penitentiary, upon his conviction of the offense for which he was indicted and tried. That is a sentence which can only be imposed where it is specifically prescribed,

or where the imprisonment ordered is for a period longer than one year, or at hard labor. To an imprisonment for that period or at hard labor in a state penitentiary infamy is attached, and a taint of that character can be cast only in the cases mentioned.

Section 5356 of the Revised Statutes of the United States, under which the defendant was indicted and convicted, prescribes as a punishment for the offenses designated fine or imprisonment -- the fine not to exceed $1,000, and the imprisonment not more than one year -- or by both such fine and imprisonment. Such imprisonment cannot be enforced in a state penitentiary. Its limitation, being to one year, must be enforced elsewhere. Section 5541 of the Revised Statutes provides that:

"In every case where any person convicted of any offense against the United States is sentenced to imprisonment for a period longer than one year, the court by which the sentence is passed may order the same to be executed in any state jail or penitentiary within the district or state where such court is held, the use of which jail or penitentiary is allowed by the legislature of the state for that purpose."

And section 5542 provides for a similar imprisonment in a state jail or penitentiary where the person has been convicted of any offense against the United States and sentenced to imprisonment and confinement at hard labor. It follows

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that the court had no jurisdiction to order an imprisonment when the place is not specified in the law, to be executed in a penitentiary, when the imprisonment is not ordered for a period longer than one year or at hard labor. The statute is equivalent to a direct denial of any authority on the part of the court to direct that imprisonment be executed in a penitentiary in any cases other than those specified. Whatever discretion, therefore, the court may possess in prescribing the extent of imprisonment as a punishment for the offense committed, it cannot, in specifying the place of imprisonment, name one of these institutions. This has been expressly adjudged in *In re Mills,* 135 U. S. 263 , 135 U. S. 270 , which in

one part of it presents features in all respects similar to those of the present case.

There, the petitioner, Mills, was detained by the warden of the state penitentiary in Columbus, Ohio, pursuant to two judgments of the District Court of the United States for the Western District of Arkansas sentencing him in each case to confinement in the penitentiary of that state. Application was made by the prisoner for a writ of habeas corpus on the ground that the court by which he was tried had no jurisdiction of the offenses with which he was charged, and on the further ground that his detention in the penitentiary under the sentences, neither of which was for a longer period than one year, was contrary to the laws of the United States. The first position was not considered tenable, but the second was deemed sufficient to authorize the issue of the writ. The Court held that, apart from any question as to whether the court below had jurisdiction to try the offense charged, the detention of the petitioner in the penitentiary upon sentences neither of which was for imprisonment longer than one year was in violation of the laws of the United States, and that he was therefore entitled to be discharged from the custody of the warden of the institution. "A sentence simply of *imprisonment,'" said the Court,*

"in the case of a person convicted of an offense against the United States where the statute prescribing the punishment does not require that the accused shall be confined in a penitentiary cannot be executed by confinement in that institution except in cases where

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the sentence is 'for a period longer than one year.' There is consequently no escape from the conclusion that the judgment of the court sentencing the petitioner to imprisonment in a penitentiary in one case for a year and in the other for six months was in violation of the statutes of the United States. The court below was without jurisdiction to pass any such sentences, and the orders directing the sentences of imprisonment to be executed in a penitentiary are void."

The Court added: "This is not a case of mere error, but one in which the court below transcended its power," citing *Ex Parte Lange,* 18 Wall. 163, 85 U. S. 176 ; *Ex Parte Parks,* 93 U. S. 18 , 93 U. S. 23 ; *Ex Parte Virginia,* 100 U. S. 339 , 100 U. S. 343 ; *Ex Parte Rowland,* 104 U. S. 604 , 104 U. S. 612 ; *In re Coy,* 127 U. S. 731 , 127 U. S. 738 , and *Hans Nielson, Petitioner,* 131 U. S. 176 , 131 U. S. 182 .

Counsel for the government admits that upon the authority of that case, construing the Revised Statutes, the petitioner should not have been sentenced to imprisonment in the penitentiary, but he claims that the judgment and sentence are not for that cause void, so as to entitle the petitioner to a writ of habeas corpus for his discharge, and he asks the Court to reconsider the doctrine announced, contending that neither the reason of the law nor the authorities sustain the position. According to his argument, it would seem that the court does not exceed its jurisdiction when it directs imprisonment in a penitentiary, to which place it is expressly forbidden to order it. It would be as well, and be equally within its authority, for the court to order the imprisonment to be in the guard house of a fort, or the hulks of a prison ship, or in any other place not specified in the law.

We are unable to agree with the learned counsel, but are of opinion that in all cases where life or liberty is affected by its proceedings, the court must keep strictly within the limits of the law authorizing it to take jurisdiction, and to try the case, and to render judgment. It cannot pass beyond those limits in any essential requirement in either stage of these proceedings, and its authority in those particulars is not to be enlarged by any mere inferences from the law or doubtful construction of its terms. There has been a great deal said

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and written, in many cases with embarrassing looseness of expression, as to the jurisdiction of the courts in criminal cases. From a somewhat extended examination of the authorities, we will venture to state some rule applicable to all of them, by which the jurisdiction as to any particular judgment of the court in such cases may be determined. It is plain that such court has jurisdiction to render a

particular judgment only when the offense charged is within the class of offenses placed by the law under its jurisdiction, and when, in taking custody of the accused and in its modes of procedure to the determination of the question of his guilt or innocence, and in rendering judgment, the court keeps within the limitations prescribed by the law, customary or statutory. When the court goes out of these limitations, its action, to the extent of such excess, is void. Proceeding within these limitations, its action may be erroneous, but not void.

To illustrate: in order that a court may take jurisdiction of a criminal case, the law must in the first instance authorize it to act upon a particular class of offenses within which the one presented is embraced. Then comes the mode of the presentation of the offense to the court. That is specifically prescribed. If the offense be a felony, the accusation in the federal court must be made by a grand jury summoned to investigate the charge of the public prosecutor against the accused. Such indictment can only be found by a specified number of the grand jury. If not found by that number, the court cannot proceed at all. If the offense be only a misdemeanor, not punishable by imprisonment in the penitentiary, *Mackin v. United States,* 117 U. S. 348 , the accusation may be made by indictment of the grand jury, or by information of the public prosecutor. An information is a formal charge against the accused of the offense, with such particulars as to time, place, and attendant circumstances as will apprise him of the nature of the charge he is to meet, signed by the public prosecutor. When the indictment is found, or the information is filed, a warrant is issued for the arrest of the accused, to be brought before the court, unless he is at the time in custody, in which case an order for that purpose is made, to the end in

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either case that he may be arraigned and plead to the indictment or information. When he is brought before the court, objections to the validity or form of the indictment or information, if made, are considered, or issue is joined upon the accusation. When issue is thus joined, the court must proceed to trial by a jury, except in case of the accused's confession. It cannot then proceed to determine the issue in any other way. When the jury have rendered their verdict, the court

has to pronounce the proper judgment upon such verdict, and the law, in prescribing the punishment either as to the extent or the mode or the place of it, should be followed. If the court is authorized to impose imprisonment, and it exceeds the time prescribed by law, the judgment is void for the excess. If the law prescribes a place of imprisonment, the court cannot direct a different place not authorized. It cannot direct imprisonment in a penitentiary when the law assigns that institution for imprisonment under judgments of a different character. If the case be a capital one and the punishment be death, it must be inflicted in the form prescribed by law. Although life is to be extinguished, it cannot be by any other mode. The proposition put forward by counsel that if the court has authority to inflict the punishment prescribed, its action is not void though it pursues any form or mode which may commend itself to its discretion, is certainly not to be tolerated. Imprisonment might be accompanied with inconceivable misery and mental suffering by its solitary character or other attending circumstances. Death might be inflicted by torture or by starvation, or by drawing and quartering. All these modes, or any of them, would be permissible if the doctrine asserted by him can be maintained.

A question of some difficulty arises which has been disposed of in different ways, and that is as to the validity of a judgment which exceeds in its extent the duration of time prescribed by law. With many courts and judges, perhaps with the majority, such judgment is considered valid to the extent to which the law allowed it to be entered, and only void for the excess. Following out this argument, it is further claimed that therefore the writ of habeas corpus cannot be

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invoked for the relief of a party until the time has expired to which the judgment should have been limited. But that question is only of speculative interest here, for there is here no question of excess of punishment. The prisoner is ordered to be confined in the penitentiary, where the law does not allow the court to send him for a single hour. To deny the writ of habeas corpus in such a case is a virtual suspension of it, and it should be constantly borne in mind that the writ was intended as a protection of the citizen from encroachment upon his liberty from

any source -- equally as well from the unauthorized acts of courts and judges as the unauthorized acts of individuals.

The law of our country takes care, or should take care, that not the weight of a judge's finger shall fall upon any one except as specifically authorized. A rigid adherence to this doctrine will give far greater security and safety to the citizen than permitting the exercise of an unlimited discretion on the part of the courts in the imposition of punishments, as to their extent, or as to the mode or place of their execution, leaving the injured party, in case of error, to the slow remedy of an appeal from the erroneous judgment or order, which in most cases would be unavailing to give relief In the case before us, had an appeal been taken from the judgment of the United States Court of the Indian Territory, it would hardly have reached a determination before the period of the sentence would have expired and the wrong caused by the imprisonment in the penitentiary have been inflicted.

Much complaint is made that persons are often discharged from arrest and imprisonment when their conviction, upon which such imprisonment was ordered, is perfectly correct, the excess of jurisdiction on the part of the court being in enlarging the punishment, or in enforcing it in a different mode or place than that provided by the law. But in such cases, there need not be any failure of justice, for where the conviction is correct and the error or excess of jurisdiction has been as stated, there does not seem to be any good reason why jurisdiction of the prisoner should not be reassumed by the court that imposed the sentence in order that its defect may be corrected.

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The judges of all courts of record are magistrates, and their object should be not to turn loose upon society persons who have been justly convicted of criminal offenses, but, where the punishment imposed, in the mode, extent, or place of its execution, has exceeded the law, to have it corrected by calling the attention of the court to such excess. We do not perceive any departure from principle, or any denial of the petitioner's right, in adopting such a course. He complains of the unlawfulness of his place of imprisonment. He is only entitled to relief from that

unlawful feature, and that he would obtain if opportunity be given to that court for correction in that particular. It is true, where there are also errors on the trial of the case affecting the judgment not trenching upon its jurisdiction, the mere remanding the prisoner to the original court that imposed the sentence to correct the judgment in those particulars for which the writ is issued would not answer, for his relief would only come upon a new trial, and his remedy for such errors must be sought by appeal or writ of error. But in a vast majority of cases, the extent and mode and place of punishment may be corrected by the original court without a new trial, and the party punished as he should be, while relieved from any excess committed by the court, of which he complains. In such case, the original court would only set aside what it had no authority to do, and substitute directions required by the law to be done upon the conviction of the offender.

Some of the state courts have expressed themselves strongly in favor of the adoption of this course, where the defects complained of consist only in the judgment -- in its extent or mode, or place of punishment -- the conviction being in all respects regular. In *Beale v. Commonwealth,* 25 Penn.St. 11, 22, the Supreme Court of Pennsylvania said:

"The common law embodies in itself sufficient reason and common sense to reject the monstrous doctrine that a prisoner whose guilt is established by a regular verdict is to escape punishment altogether because the court committed error in passing the sentence. If this court sanctioned such a rule, it would fail to perform the chief duty for which it was established. "

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It is true that this language was used in a case pending in the supreme court of a state on writ of error, but if then the court would send the case back to have the error, not touching the verdict, corrected and justice enforced, there is the same reason why such correction should be made when the prisoner is discharged on habeas corpus for alleged defects of jurisdiction in the rendition of the judgment under which he is held. The end sought by him -- to be relieved from the defects in the judgment rendered to his injury -- is secured, and at the same time the

community is not made to suffer by a failure in the enforcement of justice against him.

The court is invested with the largest power to control and direct the form of judgment to be entered in cases brought up before it on habeas corpus. Section 761 of the Revised Statutes, on this subject provides that:

"The court, or justice, or judge shall proceed in a summary way to determine the facts of the case by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require."

It would seem that in the interest of justice and to prevent its defeat, this Court might well delay the discharge of the petitioner for such reasonable time as may be necessary to have him taken before the court where the judgment was rendered, that the defects, for want of jurisdiction, which are the subject of complaint in that judgment may be corrected. *Medley, Petitioner,* 134 U. S. 160 , 134 U. S. 174 .

In the case of *Coleman v. Tennessee,* 97 U. S. 509 , a party who had been convicted of a capital offense, and the judgment had been confirmed by the Supreme Court of that state, was discharged by judgment of this Court because it was held that the state court had no jurisdiction to try a soldier of the army of the United States for a military offense committed by him while in the military service, and subject to the articles of war. But as it appeared that the prisoner had been tried by a court martial regularly convened in the army for the same offense, and sentenced to be shot, and had afterwards escaped, this Court, in reversing the judgment of the Supreme Court of Tennessee, stated that that court could turn the prisoner over to the military authorities of the United States. He was so turned

over, and the punishment was commuted to life imprisonment, and he was sent to Fort Leavenworth to serve it out.

In some cases, it is true that no correction can be made of the judgment, as where the court had, under the law, no jurisdiction of the case -- that is, no right to take cognizance of the offense alleged -- and the prisoner must then be entirely discharged; but those cases will be rare, and much of the complaint that is made for discharging on habeas corpus persons who have been duly convicted will be thus removed.

Ordered that the writ of habeas corpus issue, and that the petitioner be discharged from the custody of the warden of the penitentiary at Anamosa, in the State of Iowa, but without prejudice to the right of the United States to take any lawful measures to have the petitioner sentenced in accordance with law upon the verdict against him.