Johnson Vs. Hoy

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Court : US Supreme Court

Decided On : Feb-03-1913

Appeal No. : 227 U.S. 245

Appellant : Johnson

Respondent : Hoy

Judgement :

Johnson v. Hoy - 227 U.S. 245 (1913)
U.S. Supreme Court Johnson v. Hoy, 227 U.S. 245 (1913)

Johnson v. Hoy

No. 842

Argued January 7, 8, 1913

Decided February 3, 1913

227 U.S. 245

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

SYLLABUS

The writ of habeas corpus is not intended to serve the office of a writ of error even after verdict, and, for stronger reasons, is not available before trial except in rare and exceptional cases.

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The orderly course of a trial should be pursued and usual remedies exhausted even where petitioner attacks the constitutionality of the act under which he is held. *Glagsow v. Moyer,* 225 U. S. 420 .

Where petitioner bases his petition on the round that excessive bail is required, and, before decision on the writ, furnishes the bail, as the court can only grant the same relief that the writ was intended to afford, the appeal from the judgment denying the writ must be dismissed.

The facts are stated in the opinion.

MR. JUSTICE LAMAR delivered the opinion of the Court.

On November 7, 1912, Johnson was indicted for a violation of the White Slave Traffic Act (June 25, 1910, 36 Stat. 825, c. 395). He was arrested, and the court fixed his bail at $30,000, but declined to accept as surety anyone who was indemnified against loss, or to permit the defendant to deposit cash in lieu of bond. The defendant thereupon applied for a writ of habeas corpus on the ground (1) that excessive bail was required, on terms onerous and prohibitive, and (2) that the act under which he had been indicted was unconstitutional and void. After a hearing, the petition was denied, and he appealed to this Court, where a motion was made that he be admitted to bail pending the hearing. This was resisted by the Solicitor General, and, before a decision thereon, was abandoned. On appellant's motion, the case was advanced to be heard with others involving the constitutionality of the same act. The defendant's counsel took part in the argument of that question, January 6, 1913. From an affidavit attached to the brief

of the government, submitted at that time, it appears

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that, on November 15, 1912, Johnson had given bond, which had been approved by the district judge, and had been released from arrest under the indictment. The petitioner insists that the release on bail was known to the government when the motion to advance was made, and, not then having been urged, he is now entitled to a decision on the constitutional question argued, so that, if in his favor, he would avoid rearrest and trial.

The writ of habeas corpus is not intended to serve the office of a writ of error, even after verdict, and, for still stronger reasons, it is not available to a defendant before trial, except in rare and exceptional cases, as pointed out in *Ex Parte Royall,* 117 U. S. 241 . This is an effort to nullify that rule, and to depart from the regular course of criminal proceedings by securing from this Court, in advance, a decision on an issue of law which the defendant can raise in the district court, with the right, if convicted, to a writ of error on any ruling adverse to his contention. That the orderly course of a trial must be pursued and the usual remedies exhausted, even where the petitioner attacks on habeas corpus the constitutionality of the statute under which he was indicted, was decided in *Glasgow v. Moyer,* 225 U. S. 420 . That and other similar decisions have so definitely established the general principle as to leave no room for further discussion. *Riggins v. United States,* 199 U. S. 547 .

It is claimed, however, that the defendant was required to give excessive bail on prohibitive conditions, and that this fact, in connection with the attack on the valid of the statute, takes the case out of the general rule and brings it within the exceptional cases referred to in *Ex Parte Royall, supra,* so as to give petitioner the right to this hearing in advance of a trial. But even if it could be claimed that the facts relied on presented any reason for allowing him a hearing on the constitutionality of the act at this time, the defendant would not be entitled

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to the benefit of the writ, because, since the appeal, he has given bond in the district court, and has been released from arrest under the warrant issued on the indictment. He is no longer in the custody of the marshal to whom the writ is addressed and from whose custody he seeks to be discharged. The defendant is now at liberty, and having secured the very relief which the writ of habeas corpus was intended to afford to those held under warrants issued on indictments, the appeal must be

Dismissed.