

1-1957

Coram Norbis: General Limitations--Availability to Persons Irregularly Released from Imprisonment

Raymond L. Mushrush

Follow this and additional works at: https://repository.uchastings.edu/hastings_law_journal



Part of the [Law Commons](#)

Recommended Citation

Raymond L. Mushrush, *Coram Norbis: General Limitations--Availability to Persons Irregularly Released from Imprisonment*, 8 HASTINGS L.J. 318 (1957).

Available at: https://repository.uchastings.edu/hastings_law_journal/vol8/iss3/7

This Note is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository.

The dissenting opinion appears unwilling to accept the basic underlying philosophy of Juvenile Court Law which is reformation rather than punishment of the youthful offender and regards the proceedings in Juvenile Court as criminal in nature. On the other hand, the position of the majority of the court adheres to the basic philosophy of Juvenile Court Law while adequately protecting minor's legal and constitutional rights.

Kenneth H. Wechsler

CORAM NOBIS: GENERAL LIMITATIONS—AVAILABILITY TO PERSONS IRREGULARLY RELEASED FROM IMPRISONMENT

A three-time loser serving a three-year sentence in the state prison for larceny probably shouldn't complain when he is released after serving only two years of his sentence. But Sam Huffman did, and thereby gave the Supreme Court of Oregon¹ the opportunity for an exhaustive consideration of the modern development of the ancient writ of coram nobis.² The lengthy opinion of Justice Brand, specially concurred in by Justice Rossman, arose upon what can only be characterized as an extremely unusual set of facts.

On September 18, 1950, Huffman was charged with larceny. He formally waived indictment by grand jury and was arraigned under an information filed by the District Attorney, whereupon he entered a plea of guilty. Two days later, with Huffman in court, witnesses were interrogated, and Huffman moved to change his plea to "not guilty." Sentencing was postponed pending ruling on the motion, which was opposed by the state. The succeeding day the motion was denied, and Huffman sentenced to three years in the state penitentiary. In August, 1951, Huffman petitioned for habeas corpus, bringing into question the constitutional validity of his waiver of indictment, the allegedly fraudulent procurement of his plea of guilty and the failure of the court to allow him to withdraw it, and a claimed denial of the right to counsel. While the habeas corpus proceeding was pending, Huffman was suddenly released from prison after serving only two years of his time. *It is evident that the release was without authority of any competent agency under Oregon law*, although the opinion does not make it clear whether the discharge was due to an error in computing the length of time served, or whether the Warden mistakenly thought he was authorized to discharge Huffman after giving credit for good behavior, even granting that he was entitled to such credit. Whatever the cause, Sam Huffman was on the outside looking in, one year early.

Notwithstanding the irregularity of the release, the habeas corpus proceeding was dismissed as moot on March 4, 1953, since Huffman was no longer in confinement.³ One year and nine months later, Huffman filed the petition for coram nobis which is the subject of the opinion in *State v. Huffman*, setting forth the facts of the case and further alleging that *he had demanded readmission to the prison and*

¹ *State v. Huffman*, 207 Ore., 297 P.2d 831 (1956).

² The writ of error *quae coram nobis resident* (matters which are still before us) was an ancient common law writ issued out of the King's Bench after judgment, presenting facts not raised at trial and not in the record, which, if known at the trial would have prevented rendering of the judgment. Common examples of such facts were the coverture, nonage, insanity or death of a party and other pleas in bar. Also called 'coram vobis'; see 1 HOLDSWORTH, HISTORY OF ENGLISH LAW 224 (3d ed. 1823).

³ *Huffman v. Alexander*, 197 Ore. 331, 253 P.2d 289 (1953).

had been denied.⁴ The petition prayed that the now four-year-old judgment be vacated, and that he be allowed to enter a plea of not guilty. The trial court where the motion was filed dismissed the petition *for want of jurisdiction*, apparently relying on *State v. Rathie*,⁵ and the earlier decision of the Supreme Court in *Huffman v. Alexander*.⁶ Huffman appealed to the Oregon Supreme Court.

State v. Rathie had held that relief in the nature of coram nobis was not available in Oregon under what is now Ore. Rev. Stat. 138.010,⁷ abolishing writs of error and certiorari in criminal actions. But Mr. Justice Brand in *State v. Huffman* declared that the statute in question had no applicability to a motion in the nature of coram nobis, since coram nobis is not an *appellate* procedure, but a writ directed to the court in which judgment was pronounced. *State v. Rathie* and *Huffman v. Alexander*, to the extent that the latter depended on the former, were therefore overruled, and the court proceeded to an examination of the writ (or more properly, the modern motion in the nature of the writ) as a question of first impression.

In holding that the trial court had *jurisdiction* to hear the motion in the form of coram nobis, thus reversing the ruling of that court, the Oregon Supreme Court took the opportunity to make an extensive survey of the contemporary evolution of the remedy in the nature of coram nobis. The opinion makes only passing reference to *Sanders v. State*,⁸ oft-cited as the leading authority for the current status of coram nobis type relief. In so doing, the court seems to stand on firm ground, for that case has been roundly criticized from a number of quarters.⁹ Mr. Justice Brand preferred to place the remedy on the firmer base erected by the United States Supreme Court in the leading case of *Mooney v. Holohan*,¹⁰ and later cases of similar import,¹¹ providing that

"Upon the state courts equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution. [citing cases]. In view of the dominant requirement of the Fourteenth Amendment, we are not at liberty to assume that the State has denied to its court jurisdiction to redress the prohibited wrong upon a proper showing and in an appropriate proceeding for that purpose."¹²

The *Mooney* doctrine thus requires that the states leave open to persons called to answer for crime some avenue by which they may vindicate their constitutional rights, even after conviction and imprisonment under a judgment which on its face satisfies all requirements of due process. Fundamental rights may not be drowned in procedural deficiencies.

Coram nobis is such an avenue, and it is upon this ground that the opinion holds it available as a remedy in Oregon. In view of the criticism that has been leveled at *Sanders v. State*, the holding seems sound.¹³

⁴ For the relevance of this allegation, see *White v. Pearlman*, 42 F.2d 788 (10th Cir. 1930).

⁵ 101 Ore. 368, 200 Pac. 790 (1921).

⁶ 197 Ore. 331, 253 P.2d 289 (1953).

⁷ Writs of error and certiorari in criminal actions are abolished. The only mode of reviewing a judgment or order in a criminal action is that prescribed by this chapter. (Emphasis added.) Formerly O.C.L.A. 26-1301.

⁸ 85 Ind. 318 (1882).

⁹ See, e.g., *George v. State*, 211 Ind. 429, 6 N.E.2d 336 (1937); *Robertson v. Commonwealth*, 269 Ky. 762, 132 S.W.2d 69 (1939); and *Amandes, Coram Nobis, Panacea or Carcinoma*, 7 HASTINGS L.J. 48, 50-54 (1955).

¹⁰ 294 U.S. 103 (1934).

¹¹ See, e.g., *Dowd v. United States ex rel. Cook*, 340 U.S. 206 (1950); *Carter v. Illinois*, 329 U.S. 173 (1946); *Malinski v. New York*, 324 U.S. 401 (1944).

¹² *Mooney v. Holohan*, 294 U.S. at 113.

¹³ To the same effect, see FRANK, CORAM NOBIS 11 (1953).

The general importance of *State v. Huffman* does not lie, however, in its addition of the state of Oregon to the ranks of those jurisdictions recognizing coram nobis type relief, but in the definitive limitations which the case puts on the remedy. Although the *Sanders* case is now seventy-five years old, and coram nobis relief was recognized in the United States as early as a hundred and sixty-two years ago,¹⁴ it is only in the past twenty years, since the decision in *Mooney v. Holohan*, that the remedy has come into wide use. This latter developmental period has been marked by considerable confusion and some excesses of application, which occasioned one judge to characterize the writ of coram nobis as "the wild ass of the law."¹⁵

The opinion in *State v. Huffman*, after extensive consideration of authority, lays the following major limitations on granting relief:

1. Coram nobis is not available when there is *any* other remedy available to achieve the desired relief.¹⁶

2. ". . . [A] naked allegation that a constitutional right has been invaded is not sufficient. A petitioner must 'make a full disclosure of the specific facts relied on' and not merely his conclusions 'as to the nature and effect of such facts'."¹⁷

3. Though the right to bring coram nobis is not limited as to time, this does "not mean that it is beyond the power of the court to consider the effect of negligent failure to ascertain the facts or to seek relief by use of the usual statutory remedies or to proceed with due diligence when it is possible so to proceed."¹⁸

4. "The writ of error coram nobis is never granted except where substantial rights are involved."¹⁹

While it should be noted that these limitations are technically dicta, it is of significance that they were laid down as controlling on the trial court on remand, and each point raised bore a direct relation to the issues of the case. Since Huffman was out of prison, there was no other way to vindicate his rights, if any he had, than by coram nobis. Habeas corpus was precluded by Ore. Rev. Stat. 34.310.²⁰ The petition for relief was accompanied by affidavits of Huffman and his attorney, the sufficiency of which was strongly questioned by the court. The question of timeliness was put in issue by the fact that the motion was not made until four years after sentence and two years after Huffman's release from prison.

It was the requirement of substantiality of the right involved that formed the central issue of the case. Was Huffman harmed by having the four-year-old judgment remain on the record, even if fraudulent and unconstitutional, as alleged? The court seemed not to think so. Mr. Justice Brand stated:

"The defendant has served his time and is at large. There is no showing that any further governmental action against him is pending or contemplated. There is no reason

¹⁴ *Gordon v. Frazier*, 2 Wash. 130 (Va. 1795).

¹⁵ Sims, J., in *Anderson v. Buchanan*, 292 Ky. 810, 168 S.W.2d 48 (1943); see also *Amandes, Coram Nobis, Panacea or Carcinoma*, 7 HASTINGS L.J. 48 (1955).

¹⁶ For extensive citation of authority, see *State v. Huffman*, 207 Ore. at, 297 P.2d at 852.

¹⁷ *Hysler v. Florida*, 315 U.S. 411, 416 (1942).

¹⁸ *State v. Huffman*, 207 Ore. at, 297 P.2d at 852, citing numerous cases in support of the proposition.

¹⁹ *United States v. Powell*, 24 F. Supp. 160, 161 (E.D. Tenn. 1938).

²⁰ ". . . Every person imprisoned or otherwise restrained of his liberty, within this state . . . may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint, and if illegal, to be delivered therefrom." Formerly O.C.L.A. 11-413. See *Huffman v. Alexander*, 197 Ore. 331, 253 P.2d 289 (1953).

to believe that his civil rights are directly affected by this conviction for felony His case rests on the bare claim that he was convicted in violation of constitutional rights and therefore is entitled to an order allowing him to withdraw his plea of guilty, vacating his sentence, and permitting him to enter a plea of not guilty and be retried upon the original charge after the expiration of five years.²¹

It is suggested that in this the court overlooked the very grave danger to the petitioner of being retaken and required to serve out the remaining year of his sentence. While the point appears never to have been directly met in Oregon, it seems eminently clear from numerous decisions²² that a release under the circumstances involved in this case gave Huffman no immunity from ever being retaken and required to return to prison and serve out the remainder of his term. The rule elicited from these decisions is that an unlawful or irregular release from confinement is void and the time spent out of prison is not credited against the time to be served. It has even been held that a person so released might be retaken summarily, without additional process.²³ While doubt has been cast on this principle in Oklahoma in *Ex parte Eley*,²⁴ such doubt does not seem substantial in view of the number of times that case has been distinguished in its own jurisdiction.²⁵ Only Florida seems directly contra.²⁶ The rule is the same in the analogous situation of release under a void suspension of sentence in an overwhelming number of jurisdictions.²⁷

The continuing threat of being suddenly taken off the street and returned to prison would seem to involve a substantial right. That "no . . . further governmental action against Huffman is pending or contemplated" is, in the opinion of this writer, immaterial. The simple fact was that the state had in its hands a *carte blanche* to incarcerate Huffman for a year under what is alleged to be an unconstitutional conviction. (That habeas corpus would then again be available to Huffman offers little consolation. His first habeas corpus proceeding required a year and a half merely to be dismissed as moot.) Cases cited by the court as suggesting the contrary are all cases where the sentence had been fully served and the convicted defendant was subject to no further jeopardy under that conviction *per se*.²⁸ The opinion in *State v. Huffman* states, concerning the cited cases:

²¹ *State v. Huffman*, 207 Ore. at, 297 P.2d at 846.

²² *Hunter v. McDonald*, 159 F.2d 861 (10th Cir. 1947), *cert. denied*, 331 U.S. 853 (1947); *Massey v. Cunningham*, 169 Ark. 410, 275 S.W. 737 (1925); *Ex parte Vance*, 90 Cal. 208, 27 Pac. 209 (1891); *Aldredge v. Potts*, 187 Ga. 290, 200 S.E. 113 (1938); *Van Valkenburg v. Mackey*, 122 Kan. 204, 251 Pac. 407 (1926); *Hopkins v. North*, 151 Md. 553, 135 Atl. 367 (1926); *Ex parte Bugg*, 163 Mo. App. 44, 145 S.W. 831 (1912); *Ex parte Damato*, 11 N.J. Super. 576, 78 A.2d 734 (1951); *Ex parte Lujan*, 18 N.M. 310, 137 Pac. 587 (1913); *Schwamblé v. Sheriff*, 22 Pa. 18 (1853); *State ex rel. Estill v. Endsley*, 122 Tenn. 647, 126 S.W. 103 (1910); *State ex rel. Calandros v. Gore*, 126 W.Va. 614, 29 S.E.2d 476 (1944); generally see 49 A.L.R. 1303 (1927).

²³ *Schwamblé v. Sheriff*, *supra* note 22.

²⁴ 90 Okla. Crim. 76, 130 Pac. 321 (1913).

²⁵ *Perry v. State*, 80 Okla. Crim. 58, 157 P.2d 217 (1945); *Ex parte Rasmussen*, 31 Okla. Crim. 266, 238 Pac. 231, 232 (1926); *Ex parte Oliver*, 11 Okla. Crim. 536, 149 Pac. 117, 119 (1915); see also 49 A.L.R. 1307 (1927).

²⁶ *State ex rel. Libtz v. Coleman*, 149 Fla. 28, 5 So.2d 60 (1941).

²⁷ See generally, 141 A.L.R. 1229 (1942). *State v. Abbott*, 87 S.C. 466, 70 S.E. 6 (1911) is a leading authority for the proposition and widely cited.

²⁸ *St. Pierre v. United States*, 319 U.S. 41 (1943); *Lopez v. United States*, 217 F.2d 526 (9th Cir. 1955); *Viles v. United States*, 193 F.2d 776 (10th Cir. 1952); *Tinkoff v. United States*, 129 F.2d 21 (7th Cir. 1942); *Hudspeth v. Commonwealth*, 204 Ky. 606, 265 S.W. 18 (1924); *People v. Leavitt*, 41 Mich. 470, 2 N.W. 812 (1879); *State v. Cohen*, 45 Nev. 226, 201 Pac. 1027 (1921).