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Review of Criminal Convictions by Habeas Corpus in California

By ROBERT R. GRANUCCI*

A COMPLETE discussion of the many and varied uses of the writ of habeas corpus would be physically impossible in an article of this length. Indeed even in the area of criminal law the uses of the writ are quite diversified. For example the writ is available to secure bail on appeal,¹ to restrain trial,² to challenge the validity of a statute or ordinance,³ to test the validity of extradition proceedings⁴ and to litigate the claims of incarcerated prisoners respecting the terms of their sentences⁵ or the conditions of their confinement.⁶ Thus restriction of the scope of discussion is necessary, and this article will deal with the most challenging and controversial aspect of habeas corpus, that is, the availability of the writ to review a final judgment of conviction.

A conviction becomes final when the time for appeal lapses or where the matter is heard on appeal and the judgment is affirmed.⁷ There are basic differences between appellate review of a judgment of conviction and collateral attack on the judgment after it has become final. This article will explain how habeas corpus has been developed into a remedy which supplements but does not substitute appellate review.

At this juncture it might be noted that the Supreme Court of the United States has recently broadened the scope of review in federal habeas corpus proceedings to the point where a convicted state prisoner

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¹ *In re Newbern*, 55 Cal. 2d 500, 11 Cal. Rptr. 547, 360 P.2d 43 (1961); *In re Brumback*, 46 Cal. 2d 810, 299 P.2d 217 (1956)

² *In re Allen*, 59 A.C. 1, 27 Cal. Rptr. 168, 377 P.2d 280 (1962); *In re Howard*, 208 Cal. App. 2d 709, 25 Cal. Rptr. 590 (1962).

³ Although in most cases the writ is sought after trial and conviction (*In re Lane*, 58 Cal. 2d 99, 22 Cal. Rptr. 857, 372 P.2d 897 (1962); *In re Newbern*, 53 Cal. 2d 786, 3 Cal. Rptr. 364, 350 P.2d 116 (1960), *In re Porterfield*, 28 Cal. 2d 91, 168 P.2d 706 (1946)), the issue may be raised before trial (*In re Cregler*, 56 Cal. 2d 308, 14 Cal. Rptr. 289, 363 P.2d 305 (1961); *In re Peterson*, 51 Cal. 2d 177, 331 P.2d 24 (1958))

⁴ *In re Cooper*, 53 Cal. 2d 772, 3 Cal. Rptr. 140, 349 P.2d 956 (1960); *In re Tenner*, 20 Cal. 2d 670, 128 P.2d 338 (1942)

⁵ *Neal v. State*, 55 Cal. 2d 1, 9 Cal. Rptr. 607, 357 P.2d 839 (1960); *In re Tartar*, 52 Cal. 2d 250, 339 P.2d 553 (1959); *In re Chapman*, 43 Cal. 2d 385, 273 P.2d 817 (1954)

⁶ Convicts may not challenge matters of routine prison administration by habeas corpus, but the writ is available for the assertion of fundamental rights. *In re Riddle*, 57 Cal. 2d 848, 22 Cal. Rptr. 472, 372 P.2d 304 (1962), *In re Ferguson*, 55 Cal. 2d 663, 12 Cal. Rptr. 753, 361 P.2d 417 (1961); *In re Chessman*, 44 Cal. 2d 1, 279 P.2d 24 (1955)

⁷ See CAL. RULES ON APPEAL 24(a), 31(a)

can obtain a retrial of factual issues or a second appeal in a federal forum on the most minimal of allegations.⁸ Thus the rule enunciated in *Brown v. Allen*,⁹ namely that a federal judge reviewing a state criminal conviction might determine factual issues by a review of the transcript of the state court proceedings, has been abrogated or at least severely limited by the Court's recent decision in *Townsend v. Sain*.¹⁰ And in *Fay v. Noia*¹¹ the court held that failure to exhaust state remedies does not bar the power of a federal court to issue the writ. Even before these two cases there was much controversy surrounding the role of the federal courts in state administration of criminal justice.¹² *Townsend v. Sain* and *Fay v. Noia* will, if nothing else, add fuel to the fire. Indeed it is not impossible that the action of the Supreme Court in so broadly expanding the writ of habeas corpus and restricting the finality of state court decisions may lead to congressional reaction in the form of amendment or even repeal of the Habeas Corpus Act.¹³ In any event the recent tendency of the federal courts to broaden collateral review of state court convictions has as yet found no counterpart in the decisions of the Supreme Court of California which by and large have followed a fairly consistent pattern.

Procedure

Some knowledge of the procedure on habeas corpus is helpful to one seeking to understand the use of the writ to review criminal convictions. Actually habeas corpus procedure is simplicity itself. It is governed by the provisions of the Penal Code. Application for the writ is made on a verified petition which may be signed by the applicant himself, or by some person in his behalf.¹⁴ Although there is authority in other jurisdictions for the proposition that a court will issue the writ

⁸ See *Fay v. Noia*, 372 U.S. 391 (1963); *Townsend v. Sain*, 372 U.S. 293 (1963), *Pike v. Dickson*, —F.2d— (9th Cir., Oct. 1963). Compare *Brown v. Allen*, 344 U.S. 443 (1953).

⁹ 344 U.S. 443 (1953)

¹⁰ 372 U.S. 293 (1963).

¹¹ 372 U.S. 391 (1963)

¹² See, e.g., Reitz, *Federal Habeas Corpus: Postconviction Remedy for State Prisoners*, 108 U. PA. L. REV. 461 (1960); Pollack, *Proposals to Curtail Federal Habeas Corpus for State Prisoners: Collateral Attack on the Great Writ*, 66 YALE L. J. 50 (1956).

¹³ Such legislation was proposed even before *Fay v. Noia* and *Townsend v. Sain*. For a discussion of those proposals as well as a pertinent and well reasoned criticism of the broadened scope of federal review, see Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441 (1963) Prof. Bator's article should be required reading for anyone dealing with federal habeas corpus.

¹⁴ CAL. PEN. CODE § 1474.

on its own motion,¹⁵ this possibility appears to be obviated in California by those provisions of the constitution and the Penal Code which provide that the writ is issued on a verified petition.¹⁶

One seeking to challenge a criminal conviction by habeas corpus concerns himself with only one rule in preparing his application, but compliance with this rule is essential. The petitioner must state the facts upon which the illegality of his conviction is based and his reasons for any delay in raising the question. As the supreme court declared in *In re Swain*:¹⁷

We are entitled to and we do require of a convicted defendant that he allege with particularity the facts upon which he would have a final judgment overturned and that he fully disclose his reason for delaying in the presentation of those facts. This procedural requirement does not place upon an indigent prisoner who seeks to raise questions of the denial of fundamental rights in propria persona any burden of complying with technicalities; it merely demands of him a measure of frankness in disclosing his factual situation.¹⁸

Accordingly, where the application for a writ of habeas corpus does not state sufficient facts to enable the court to decide whether or not the writ should be granted, a denial should be entered but without prejudice to the filing of a new application which meets the requirements as enunciated by the supreme court.¹⁹

If the application states facts warranting the issuance of the writ of habeas corpus, the court to which the petition is addressed will issue either the writ itself or an order to the respondent to show cause why the writ should not be issued.²⁰ The respondent thereupon must file a return to the writ or the order. This return is made to the order of the court, not the petition.²¹ The party filing the return must set out the grounds justifying detention of the petitioner. In cases involving a final judgment of conviction the return will usually include the judgment

¹⁵ *Addis v. Applegate*, 171 Iowa 150, 154 N.W. 168 (1917); *Goetz v. Black*, 256 Mich. 564, 240 N.W. 94, 84 A. L. R. 802 (1932); *Ex parte Beckenstein*, 104 S.W.2d 404 (Mo. Ct. App. 1937).

¹⁶ CAL. CONST. art. 6, §§ 4, 4b, 5; CAL. PEN. CODE §§ 1473-75.

¹⁷ 34 Cal. 2d 300, 209 P.2d 793 (1949).

¹⁸ *Id.* at 304, 209 P.2d at 796.

¹⁹ *Ibid.*

²⁰ In *Neal v. State*, 55 Cal. 2d 11, 9 Cal. Rptr. 607, 357 P.2d 839 (1960), the petitioner cast his allegations in the form of a petition for a writ of mandate; the lower court, however, treated the application as a petition for habeas corpus, disregarding the petitioner's inappropriate prayer for a writ of mandate.

²¹ *In re Egan*, 24 Cal. 2d 323, 149 P.2d 693 (1944), *In re Collins*, 151 Cal. 340, 90 Pac. 827, 91 Pac. 397 (1907).

and commitment of petitioner and general allegations that the proceedings were due and regular.²² Then, when the writ has issued the party seeking release must file a responsive pleading to the return. This pleading is called a traverse. Failure to sufficiently traverse a return admits the truth of the matters alleged and requires the dismissal of the petition and discharge of the writ. This is because, as noted above, the return is made not to the petition but to the writ.²³ The application for a writ of habeas corpus becomes *functus officio* when the order to show cause or the writ is issued. As a practical matter, however, the parties usually stipulate at the hearing that the petition itself may be treated as a traverse to the return.²⁴

Application for a writ of habeas corpus may be made to the superior court, the district court of appeal, or the supreme court.²⁵ If the allegations warrant judicial inquiry, an order to show cause is issued. Where factual issues are raised in the proceedings, the superior court is obviously well equipped to hold an evidentiary hearing. This is not true of the appellate courts, and, accordingly, where factual issues are presented, a referee is appointed to take evidence and determine them. While the findings of a referee are not binding on the appellate court, they are accorded great weight; but it is the court, and not the referee, which makes the final determination of factual issues.²⁶

Matters Reviewable on Habeas Corpus

It was originally held that the writ of habeas corpus, where the petitioner was held in custody pursuant to a final judgment, reviewed nothing more than the jurisdiction of the committing court.²⁷ For example a municipal court has no power to enter a felony conviction and any attempt to do so would be beyond its jurisdiction. The Supreme Court of California, however, has extended the availability of the writ to review matters which cannot be characterized as jurisdictional.²⁸

²² CAL. PEN. CODE § 1480.

²³ *In re Egan*, 24 Cal. 2d 323, 144 P.2d 693 (1944); *In re Collins*, 151 Cal. 340, 90 Pac. 827, 91 Pac. 397 (1907), *In re Newman*, 187 Cal. App. 2d 377, 9 Cal. Rptr. 746 (1960); *In re Martha*, 122 Cal. App. 2d 654, 265 P.2d 527 (1954); *In re Soldavini*, 64 Cal. App. 2d 677, 149 P.2d 193 (1944).

²⁴ *In re Stafford*, 160 Cal. App. 2d 110, 113, 324 P. 2d 967 (1958)

²⁵ CAL. CONST. art VI, §§ 4, 4(b), 5; CAL. PEN. CODE § 1475.

²⁶ *In re Riddle*, 57 Cal. 2d 848, 853, 22 Cal. Rptr. 472, 372 P.2d 304 (1962); *In re Martinea*, 52 Cal. 2d 808, 812, 345 P.2d 449 (1959).

²⁷ See generally, *Ex parte Kearney*, 55 Cal. 212 (1880); *Ex parte Max*, 44 Cal. 579 (1872), *Ex parte Branigan*, 19 Cal. 133 (1861).

²⁸ "The broadened uses of habeas corpus have been rationalized by expressly expanding the situations in which it is available to review matters over which the trial court had

Although generalizations are dangerous in this area, it is fair to say that the writ is available where there was error in the trial proceedings of a constitutional dimension, which carried the risk of convicting an innocent person.²⁹

Thus the writ has been available to a prisoner claiming he was denied the right to counsel,³⁰ that his conviction was brought about by perjured testimony,³¹ that a plea of guilty was involuntary,³² or that he was, without fault of his own, erroneously precluded from presenting a defense.³³ It has been denied in situations where the questions raised involved the admissibility of evidence³⁴ or technical deficiencies in the accusatory pleading.³⁵

One novel aspect of the writ is its availability to a prisoner seeking to perfect an appeal. While no extraordinary writ will confer upon an appellate court the power to determine the appeal in the absence of a timely notice of appeal, habeas corpus has been used to determine the timeliness of a notice of appeal,³⁶ and also to cure a default resulting from the failure to file an opening brief after the filing of a timely notice of appeal.³⁷ In view of the fact that the petitioners in those cases did not challenge the legality of their detention on the habeas corpus proceedings, perhaps the writ of mandate would have been more appro-

'jurisdiction,' rather than by expanding the concept of 'jurisdiction.'" *In re McInturff*, 37 Cal. 2d 876, 880, 236 P.2d 574, 577 (1951). See also *In re Seeley*, 29 Cal. 2d 294, 176 P.2d 24 (1946); *In re McVickers*, 29 Cal. 2d 264, 273, 176 P.2d 40, 46 (1946); *In re Bell*, 19 Cal. 2d 488, 493-94, 122 P.2d 22, 26 (1942).

²⁹ See concurring opinion of Justice Traynor in *In re Harris*, 56 Cal. 2d 879, 880, 16 Cal. Rptr. 889, 890, 366 P. 2d 305, 306 (1961)

³⁰ *In re James*, 38 Cal. 2d 302, 240 P.2d 596 (1952). But the right to counsel may be waived at trial, and such waiver will, if intelligently made, bar relief on habeas corpus. *In re Connor*, 16 Cal. 2d 701, 108 P.2d 10 (1940).

³¹ *In re Landley*, 29 Cal. 2d 709, 177 P.2d 918 (1947); *In re Mooney*, 10 Cal. 2d 1, 73 P.2d 554 (1937). Two petitions alleging this ground are presently pending before the Supreme Court of California. Orders to show cause have issued and the matters have been referred to referees. *In re Imbler*, Crim. No. 7212; *In re Rosoto*, Franklin and Vlahovich, Crim. No. 7490.

³² *In re Atchley*, 48 Cal. 2d 408, 310 P.2d 15 (1957); *In re Hough*, 24 Cal. 2d 522, 150 P.2d 448 (1944). A reference has recently been held on order of the supreme court after issuance of an order to show cause in *In re Seiterle*, Crim. No. 7507, a case which raises this identical issue.

³³ *In re Harris*, 56 Cal. 2d 879, 16 Cal. Rptr. 889, 366 P.2d 305 (1961); *In re Newbern*, 175 Cal. App. 2d 862, 1 Cal. Rptr. 80 (1959).

³⁴ *In re Dixon*, 41 Cal. 2d 756, 264 P.2d 513 (1953); see also concurring opinion of Mr. Justice Traynor in *In re Harris*, *supra* note 30.

³⁵ *In re Mitchell*, 56 Cal. 2d 667, 16 Cal. Rptr. 281, 365 P. 2d 177 (1961).

³⁶ *In re Gonsalves*, 48 Cal. 2d 638, 311 P.2d 483 (1957); *In re Byrnes*, 26 Cal. 2d 824, 161 P. 2d 376 (1945).

³⁷ *In re Martin*, 58 Cal. 2d 133, 23 Cal. Rptr. 167, 373 P. 2d 103 (1962).

priate since the order of the supreme court in any event did nothing more than direct the court to hear the appeal on the merits.³⁸

Prerequisites for Review

A. Issues of Fact Must Be Litigated at the Trial

California has adopted the rule that on habeas corpus proceedings issues of fact may not be considered which were or could have been raised at the trial. This is simply a matter of common sense. Obvious considerations of finality require that a criminal defendant not be permitted to litigate and relitigate his case.³⁹ Illustrative of that rule is the court's decision in *In re Carmen*.⁴⁰

Rayna Tom Carmen was first convicted of murder and assault in 1950 in the superior court of Madera county and sentenced to death. On appeal the State supreme court affirmed the assault conviction and reversed the murder conviction.⁴¹ At the re-trial petitioner was again convicted of first degree murder.⁴² The prosecution alleged and produced evidence that the murder had been committed in Madera county. On appeal before the supreme court for the second time, it was suggested that facts could be adduced showing that the murder had been committed on a small tract of land within Madera county known as an Indian allotment, which constituted Indian country within the meaning of federal law. The contention was that therefore petitioner and his victim were Indians and accordingly the sole jurisdiction over the offense would be in the federal courts. The court denied the application and affirmed the judgment of the conviction, noting that the facts shown in the trial court record were insufficient to show exclusive jurisdiction in the federal court.⁴³

Carmen then instituted habeas corpus proceedings, and the supreme court upon issuance of the writ, appointed a referee to determine the

³⁸ Cf. *Vasquez v. District Court of Appeal*, 59 A.C. 606, 30 Cal. Rptr. 467, 381 P.2d 203 (1963). In the final analysis, the decisions in *Martin*, *Gonsalves* and *Byrnes* are the converse of *Neal v. State*, *supra* note 17. They granted relief in the nature of mandamus despite the prayer for an inappropriate writ, i.e. habeas corpus.

³⁹ "In this state a defendant is not permitted to try out his contentions piecemeal by successive proceedings attacking the validity of the judgment against him." *In re Connor*, 16 Cal. 2d 701, 705, 708 P.2d 10, 13 (1940). Cf. *Sanders v. United States*, 373 U.S. 1 (1963).

⁴⁰ 48 Cal. 2d 851, 313 P.2d 817 (1957)

⁴¹ *People v. Carmen*, 36 Cal. 2d 768, 228 P.2d 281 (1951)

⁴² *People v. Carmen*, 43 Cal. 2d 342, 273 P.2d 521 (1954).

⁴³ The evidence presented at the trial is not sufficient to permit a determination that there is exclusive federal jurisdiction in the present case, and we do not pass on the question of what remedies may be available to the defendant to show alleged

status of petitioner and his victim, as well as the locus of the crimes. The referee heard evidence and made findings in support of Carmen's allegations.

In rendering its decision denying the writ, the court concluded that it was not necessary to consider the referee's findings of fact. The problem before it, in the court's view, was whether it might consider facts outside the trial court record in habeas corpus proceedings generally and in the case before it in particular. So cogent is the court's reasoning on these points that this portion of the opinion deserves to be quoted in full:

Traditionally the inquiry on habeas corpus has been limited to an examination of facts appearing upon the face of the record and no evidence dehors the record has been received to impeach the judgment. (*In re Selowsky*, 189 Cal. 331 [208 Pac. 99]; *In re Stevenson*, 187 Cal. 773 [204 Pac. 216]; *In re Nicholson*, 24 Cal. App. 2d 15 [74 P.2d 288]; *In re Miranda*, 15 Cal. App. 2d 443 [59 P.2d 544]; *In re Murphy*, 79 Cal. App. 64 [248 Pac. 1044]; *In re Ballas*, 53 Cal. App. 109 [199 Pac. 816]; *In re Todd*, 44 Cal. App. 496 [186 Pac. 790]; see also 39 C.J.S., Habeas Corpus, § 16, p. 456.) However, it was said in *In re Connor*, 16 Cal. 2d 701, 712 [108 P.2d 10], that "[t]he scope of inquiry on habeas corpus in this state may . . . under exceptional circumstances, extend over the entire course of proceedings in the lower courts . . . and may embrace additional evidence received by this court either directly or under an order of reference."

The scope of inquiry has been so extended in instances where a petitioner has contested the validity of a final judgment of conviction upon the ground that he had been denied the aid of counsel (*In re Connor*, *supra*, 16 Cal. 2d 701); or that his conviction had been secured solely by perjured testimony knowingly used by prosecuting officials (*In re Mooney*, 10 Cal. 2d 1 [73 P.2d 554]); or that the law under which he had had been convicted was unconstitutional (*In re Bell*, 19 Cal. 2d 488 [122 P.2d 22]).

The asserted grounds of claimed lack of jurisdiction in the instant case, however, do not appear to be of such nature as would warrant a departure from the traditional scope of inquiry or would permit the consideration of new and additional facts alleged by petitioner which do not appear in the trial court record. The situation here presented is not one in which the asserted lack of jurisdiction is based upon a claim by petitioner that he was convicted of violating an unconstitutional law or was denied any fundamental constitutional right. (See *In re Bell*, *supra*,

lack of jurisdiction in the state court. Nothing in the record indicates that the location of the crime was 'Indian country' within the meaning of any of the statutes which have been cited.

43 Cal. 2d at 349, 273 P.2d at 525. The court's refusal to take additional evidence on appeal was thoroughly justified by the constitutional provision limiting its appellate jurisdiction to matters of law, CAL. CONST. art. VI, § 4, and by the authorities, *People v. Mendes*, 35 Cal. 2d 537, 546, 219 P.2d 1, 6 (1950); *People v. Cowan*, 38 Cal. App. 2d 144, 152-54, 100 P.2d 1079, 1084-85 (1940).

19 Cal. 2d 488, 501-502.) On the contrary, petitioner's claims are based entirely upon federal statutes (18 U.S.C.A. §§ 1151, 1152, 1153, and 3242), the effect of which has been changed since petitioner committed his offenses, by legislation giving the courts of this state unquestioned jurisdiction over offenses committed in "All Indian country within the state." (18 U.S.C.A. § 1162, as amended Aug. 24, 1954.)

Petitioner had the opportunity to raise the jurisdictional question here involved by presenting the alleged facts at his trials. He failed to do so and, upon the facts there alleged and proved, the trial court's implied determination that it had jurisdiction over the offenses was correct. To permit petitioner to now relitigate that issue would encourage defendants charged with crimes, the jurisdiction over which might depend upon complex factual determinations, to withhold the raising of those issues until after they had attempted to obtain a favorable result at a trial on the merits, and perhaps until such time as a conviction by the court claimed to have jurisdiction would be impossible by reason of the statute of limitations, or otherwise. (See *Ex parte Wallace, infra*, 81 Okla. Crim. 176 [162 P. 2d 205].) The sanction of such procedure would permit piecemeal litigation of factual issues which should be finally determined upon a single trial.⁴⁴

Mr. Justice Carter, in a lengthy dissenting opinion, argued for a broader scope of review on habeas corpus than that allowed by the majority.⁴⁵

It might further be noted that in a separate concurring and dissenting opinion⁴⁶ Mr. Justice Traynor stated that while he agreed with the rule announced in the majority opinion, it should be given prospective application only. Due to what Mr. Justice Traynor viewed as uncertainty of the previous decisions of the supreme court, he concluded that petitioner Carmen should have been given the benefit of the doubt and allowed to relitigate the factual questions on habeas corpus.⁴⁷

The rule which emerges from the Carmen case, and which is the law today, is this: The scope of factual review on habeas corpus is limited to the face of the record of the trial court proceedings, unless the petitioner alleges facts outside the record which, if true, would have impeded the correct resolution of factual issues in the trial court and which could not, with reasonable diligence, have been presented by the petitioner at the trial.

⁴⁴ *In re Carmen*, 48 Cal. 2d at 854-55, 313 P.2d at 818-19.

⁴⁵ *Id.* at 859, 313 P.2d at 822.

⁴⁶ *Id.* at 887, 313 P.2d at 839.

⁴⁷ Carmen eventually obtained his release in federal proceedings. *In re Carmen*, 165 F. Supp. 942 (N. D. Cal. 1958), *aff'd sub. nom. Dickson v. Carmen*, 270 F.2d 809 (9th Cir. 1959), *cert. denied*, 361 U.S. 934, *rehearing denied*, 361 U.S. 973 (1960)

B. Issues of Law Must Be Raised on Appeal

Even while broadening the availability of the writ by abandoning the requirement of a "jurisdictional" defect,⁴⁸ the Supreme Court of California emphatically and repeatedly stated that habeas corpus was to be no substitute for an appeal.⁴⁹ Finally, in the leading case of *In re Dixon*,⁵⁰ our supreme court declared:

The general rule is that habeas corpus cannot serve as a substitute for an appeal, and, in the absence of special circumstances constituting an excuse for failure to employ that remedy, the writ will not lie where the claimed errors could have been but were not raised upon a timely appeal from a judgment of conviction.⁵¹

The court stressed and it is important to note that these principles apply as well where the alleged errors relate to an asserted denial of constitutional rights.⁵²

Several practical considerations support the court's limitation of the availability of the writ of habeas corpus. For one thing, as the court has noted, "it would obviously be improper to permit a collateral attack because of claimed errors in the determination of the facts after expiration of the time for appeal when evidence may have disappeared and witnesses may have become unavailable."⁵³

A further sound reason for restricting habeas corpus is the ready availability of an appeal to the convicted defendant. In California any prisoner may appeal his conviction by the simple expedient of filing a notice of appeal and requesting appointment of counsel if he is without funds.⁵⁴ A transcript is available to him without charge.⁵⁵ Accordingly, the availability of a remedy by way of appeal makes unnecessary the use of habeas corpus to review a criminal conviction except in those

⁴⁸ See note 28 *supra*.

⁴⁹ *In re McInturff*, 37 Cal. 2d 876, 880, 236 P.2d 754, 757 (1951); *In re Manchester*, 33 Cal. 2d 740, 742, 204 P.2d 881, 882 (1949); *In re Landley*, 29 Cal. 2d 709, 723, 177 P.2d 918, 927 (1947); *In re Connor*, 16 Cal. 2d 701, 108 P.2d 10, 13 (1940).

⁵⁰ 41 Cal. 2d 756, 264 P.2d 513 (1953).

⁵¹ *Id.* at 759, 264 P.2d at 514.

⁵² *Id.* at 761, 264 P.2d at 515. The *Dixon* case is interesting for another reason as well. It demonstrated that a majority of the court was concerned enough about the use of illegally obtained evidence to grant an order to show cause and hear argument on this issue. *Dixon* clearly forecast the decision in *People v. Cahan*, 44 Cal. 2d 434, 282 P.2d 905 (1955), then two years in the future.

⁵³ *In re Dixon*, 41 Cal. 2d 756, 761, 264 P.2d 513, 515 (1953).

⁵⁴ The notice of appeal is simple to prepare and any ambiguities are construed in favor of its sufficiency. *People v. Hagan*, 203 Cal. App. 2d 34, 21 Cal. Rptr. 116 (1962), *Smith v. Ostly*, 53 Cal. 2d 262, 1 Cal. Rptr. 340, 347 P.2d 684 (1959) Appointment of counsel on appeal is a matter of right. *Vasquez v. District Court of Appeal*, 59 A. C. 606, 30 Cal. Rptr. 467 (1963)

⁵⁵ *People v. Smith*, 34 Cal. 2d 449, 211 P. 2d 561 (1949).

extraordinary circumstances where there are serious defects in the proceedings which could not be corrected on appeal.⁵⁶

Conclusion

The rules developed by the California Supreme Court respecting review of criminal convictions on habeas corpus, as we have seen, have much to commend them. The simplicity of the procedure, plus the willingness of the court to depart from the artificial concept of "jurisdiction" is a boon to the petitioner. Yet the rules requiring detailed factual pleading, exhaustion of appellate remedies, and normally limiting factual inquiries to the face of the record,⁵⁷ reflect a strong policy in favor of the finality of judgments and minimize, if not prevent, abuse of the writ. When and if amendment of the Federal Habeas Corpus Act is undertaken, Congress will have available the example of a sound and workable set of rules developed by our supreme court.

⁵⁶ See notes 30-33 *supra*.

⁵⁷ These rules have currency. See *In re Mitchell*, 56 Cal. 2d 667, 16 Cal. Rptr. 281, 365 P.2d 177 (1961) If anything, the court has recently manifested a greater selectivity as regards matters reviewable on habeas corpus. Thus Mr. Justice Traynor, in a masterful concurring opinion, has explained why, *Mapp v. Ohio*, 367 U.S. 643 (1961), notwithstanding, the writ should not be available to collaterally attack a conviction where the question is whether evidence in support thereof was unlawfully obtained. *In re Harris*, 56 Cal. 2d 879, 880, 16 Cal. Rptr. 889, 890, 366 P.2d 305, 306 (1961).