Habeas & Prison Litigation Case Law Update

a publication of the Federal Judicial Center • available via Internet at http://www.fjc.gov • number 1, June 1996

Two statutes enacted in April 1996 will have major effects on how federal courts deal with prisoner petitions. Title I of the Antiterrorism and Effective Death Penalty Act concerns habeas petitions, and the Prison Litigation Reform Act concerns conditions of confinement suits. Because these statutes are complex and likely to spawn a great deal of litigation, the Center will attempt to assist the courts by several means.

1. We will produce this newsletter to summarize relevant appellate and district court decisions under the statutes. We see it as a quick-response, short-term effort to help judges during the most intense period of judicial interpretation. It is patterned after our *Guideline Sentencing Update* publication, but will have a shorter life span. This first issue includes decisions reported as of May 27, 1996.

2. We are planning a nationally broadcast videoseminar late this summer to analyze the new habeas provisions and how the courts have been interpreting them, with some attention also to the Prison Litigation Reform Act.

3. We will adapt our already scheduled regular educational programs to take account of these legislative changes. For example, the June conference of chief probation and pretrial services officers, the August Capital Case Management Workshop for appellate clerks, this summer's programs for magistrate judges, and September's seminar on pro se litigation are all undergoing curriculum revision in light of these statutes. We are also helping circuit conference planners arrange programs on these topics.

4. We will focus on these statutes in several of our regular reporting services. The *Chambers to Chambers* serial periodical, currently running a series on federal capital prosecutions, will share court and case management innovations that judges and courts have developed in response to the new statutes. Our *Resource Guide for Managing Prisoner Civil Rights Litigation*, which has been in draft status pending the new legislation, will now move to final publication.

We welcome your comments about our responses to the new legislation and any suggestions you have. We will try to be as flexible as possible in our assistance to the courts.

HABEAS CORPUS

Courts of Appeals

Eleventh Circuit denies authorization to file second habeas petition under amended habeas statute; Supreme Court grants certiorari. After the appellate court affirmed the denial of defendant's first federal petition for habeas corpus relief and the Supreme Court denied his petition for certiorari, the state set his execution for between May 2 and May 9, 1996. The state courts denied defendant's second state habeas petition, and on May 2 he filed in the federal appellate court a request for a stay of execution and an application, pursuant to section 106 of the Antiterrorism and Effective Death Penalty Act of 1996 (to be codified at 28 U.S.C. § 2244(b)), for permission to file a second federal habeas petition in the district court. He claimed that he satisfied the requirements for a second habeas filing under the Act, and he argued alternatively that the new Act unconstitutionally restricted his right to bring habeas claims. The appellate court did not reach this second claim because it determined that defendant would not have been entitled to relief under either the new law or pre-Act law.

Under new section 2244(b)(3)(C), "[t]he court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection." The court held that neither of defendant's claims satisfied the provisions of section 2244(b)(2)(A) or (B): he did not "rel[y] on a new rule of constitutional law . . . that was previously unavailable"; the "factual predicate for the claim" was already known; and "the facts underlying the claim" would not be sufficient to establish, even under the preponderance standard, that "no reasonable factfinder would have found the applicant guilty of the underlying offense." The court concluded that "Felker has failed to show substantial grounds upon which relief might be granted under the new Act. Likewise, he has failed to show substantial grounds upon which relief might be granted insofar as any constitutional issues involving the Act are concerned, because he would not be entitled to any relief even under pre-Act law."

Felker v. Turpin, No. 96-1077 (11th Cir. May 2, 1996) (per curiam).

The Supreme Court has granted certiorari in *Felker*, limited to the following issues: "(1) Whether Title I of the Anti-Terrorism and Effective Death Penalty Act of 1996 (the Act), and in particular Section 106(b)(3)(E), 28 U.S.C. § 2244(b)(3)(E), is an unconstitutional restriction of the

Habeas & Prison Litigation Case Law Update is distributed periodically by the Federal Judicial Center to inform judges and other judicial branch personnel of selected federal court decisions interpreting the 1996 federal legislation on habeas petitions and prison litigation. Any analyses or interpretations of the case law are those of the Center staff who prepare the summaries.

jurisdiction of this Court. (2) Whether and to what extent the provisions of Title I of the Act apply to petitions for habeas corpus filed as original matters in this Court pursuant to 28 U.S.C. § 2241. (3) Whether application of the Act in this case is a suspension of the writ of habeas corpus in violation of Art. I, § 9, clause 2 of the Constitution." New 28 U.S.C. § 2244(b)(3)(E) states: "The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari."

Felker v. Turpin, 116 S. Ct. 1588 (U.S. May 3, 1996) (oral argument set for June 3, 1996).

Ninth Circuit uses prior law to deny habeas petition and request for stay of execution that were pending when new law took effect. Defendant was scheduled for execution May 3, 1996. He filed a second habeas petition April 22, 1996, and amended the petition with new claims on April 26. The district court held that it lacked jurisdiction to hear the petition without an order from the appellate court authorizing it under new 28 U.S.C. § 2244(b)(3)(A). *See* section 107(c) of the Antiterrorism and Effective Death Penalty Act of 1996 (special habeas procedures in capital cases "shall apply to cases pending on or after the date of enactment of this Act"). Alternatively, even if the Act did not apply retroactively, the district court concluded that the petition should be dismissed because defendant "failed to show cause and prejudice for bringing his successive and abusive claims" and there were no other grounds to justify granting the petition.

The appellate court affirmed on the alternative ground. "The standard for obtaining a certificate of appealability under the Act is more demanding than the standard for obtaining a certificate of probable cause under the law as it existed prior to enactment of the Act. We need not decide whether to apply the Act's more demanding standard retroactively to Williams's case. Rather, we assume, without deciding, that section 2253(c)(2) of the Act does not apply retroactively to Williams's case. We, therefore, grant a certificate of probable cause to permit Williams to appeal the district court's denial of his writ of habeas corpus." The court then concluded that "Williams's second petition raises both successive and abusive claims, and Williams has failed to demonstrate cause and prejudice for raising these claims at this late date, nor has he shown that a miscarriage of justice would result from our refusal to review these claims. We, therefore, affirm the district court's denial of Williams's petition for a writ of habeas corpus, and we deny his application for a stay of execution."

Williams v. Calderon, No. 96-99009 (9th Cir. May 1, 1996) (Thompson, J.).

District Courts

District court concludes that it may grant "certificate of appealability" under new law after denial of habeas petition. The district court denied petitioner's habeas claims on March 28, 1996. On April 26, petitioner applied for a Certificate of Probable Cause to appeal the denial. Although the habeas petition had been denied before the new habeas reform act was signed into law, the court reasoned that "in the absence of expressed contrary provisions, statutes become effective when they are signed into law," and the new act should be applied to the appeal. Under the new act, amended 28 U.S.C. § 2253(c)(1) states that "[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals." (Previously, section 2253 also allowed "the justice or judge who rendered the order" to certify the appeal.) However, the new act also amended Fed. R. App. P. 22 to state that "an appeal by the applicant for the writ may not proceed unless *a district or* a circuit judge issues a certificate of appealability pursuant to section 2253(c)" (emphasis added).

The court held that it would "apply the Rule of Appellate Procedure because it authorizes me, a district judge, to issue a certificate of appealability. The statute, 28 U.S.C. § 2253, applies by its wording only to circuit justices and judges and authorizes them to issue certificates of appealability. The statute does not say, however, that only circuit justices or judges may issue such certificates. I conclude the statute as amended does not prohibit district judges from exercising the authority vested in us by the Rule of Appellate Procedure." The court issued the certificate.

Houchin v. Zavaras, No. CIV.A. 93-K-2651 (D. Colo. May 1, 1996) (Kane, J.).

Unpublished opinions

[Although we recognize that the precedential value of unpublished decisions and the rules and practices for citing thereto may vary among the courts, we are reporting unpublished opinions and orders in order to provide the most complete picture possible of the issues being litigated under the new legislation.]

District court holds new habeas law should not be applied retroactively to pending petitions in non-capital cases. The court granted defendant's second 28 U.S.C. § 2255 motion to vacate his conviction and sentence under 18 U.S.C. § 924(c)(1) in light of a recent Supreme Court case. The court used the habeas law in effect when defendant filed his motion rather than retroactively applying the new law that became effective while defendant's motion was pending. "While the recently enacted 'Antiterrorism and Effective Death Penalty Act of 1996' amends § 2255 to require that second or successive motions be based on newly discovered evidence of the defendant's innocence, or on new rules of constitutional law, we do not believe that these provisions apply to motions filed before passage of the Act. In the same title of the Act that amends § 2255 and § 2254, Congress specifically mandated that the new procedures for habeas corpus petitions involving capital punishment are to apply to all pending and subsequently filed cases. Pub. L. No. 104-132, § 107(c) . . . (April

24, 1996). Congress declined to include such language in the portion of the Act amending § 2255, and therefore we can infer that retroactivity was not intended."

U.S. v. Trevino, No. 96 C 828 (N.D. Ill. May 10, 1996) (Aspen, C.J.). *Cf. U.S. ex rel. Centanni v. Washington,* No. 95 C 7393 (N.D. Ill. May 8, 1996) (Shadur, J.) (memorandum opinion ordering parties to brief the issue of whether the Antiterrorism and Effective Death Penalty Act of 1996 applies to non-capital cases that were pending before the date of enactment).

PRISON LITIGATION

No cases reported as of May 27, 1996.

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