# Habeas Corpus

Lat. "you have the body" Prisoners often seek release by filing a petition for a writof habeas corpus. A writ of habeas corpus is a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody. A habeas corpus petition is a petition filed with a court by a person who objects to his own or another's detention or imprisonment. The petition must show that the court ordering the detention or imprisonment made a legal or factual error. Habeas corpus petitions are usually filed by persons serving prison sentences. In family law, a parent who has been denied custody of his child by a trial court may file a habeas corpus petition. Also, a party may file a habeas corpus petition if a judge declares her in contempt of court and jails or threatens to jail her.

In Brown v. Vasquez, 952 F.2d 1164, 1166 (9th Cir. 1991), cert. denied, 112 S.Ct. 1778 (1992), the court observed that theSupreme Court has "recognized the fact that`[t]he writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.' Harris v. Nelson, 394 U.S. 286, 290-91 (1969). " Therefore, thewrit must be "administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." Harris, 394 U.S. at 291.

The writ of habeas corpus serves as an important check on the manner in which state courts pay respect to federal constitutional rights. The writ is "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." Harris v. Nelson, 394 U.S. 286, 290-91 (1969). Because the habeas process delays the finality of a criminal case, however, the Supreme Court in recent years has attempted to police the writ to ensure that the costs of the process do not exceed its manifest benefits. In McCleskey the Court raised barriers against successive and abusive petitions. The Court raised these barriers based on significant concerns about delay, cost, prejudice to the prosecution, frustration of the sovereign power of the States, and the "heavy burden" federal collateral litigation places on "scarce federal judicial resources," a burden that "threatens the capacity of the system to resolve primary disputes." McCleskey, 499 U.S. at 467.

The Court observed that"[t]he writ of habeas corpus is one of the centerpieces of our liberties. `But the writ has potentialities for evil as well as for good. Abuse of the writ may undermine the orderly administration of justice and therefore weaken the forces of authority that are essential for civilization.' " McCleskey, 499 U.S. at 496 (quoting Brown v. Allen, 344 U.S. 443, 512 (1952) (opinion of Frankfurter, J.))

The predominant inquiry on habeas is a legal one: whether the "petitioner's custody simpliciter" is valid as measured by the Constitution. Coleman v. Thompson, 501 U.S. 722, 730 (1991). The purpose of the great writ is not to relitigate state trials.

Dismissal of habeas petition under the "total exhaustion" rule of Rose v. Lundy, 455 U.S. 509, 520 (1982) (each claim raised by petitioner must be exhausted before district court may reach the merits of any claim in habeas petition). Jury exposure to facts not in evidence deprives a defendant of the rights to confrontation, cross-examination and assistance of counsel embodied in the Sixth Amendment. Dickson v. Sullivan, 849 F.2d 403, 406 (9th Cir. 1988); see also Jeffries v. Blodgett, 5 F.3d 1180, 1191 (9th Cir. 1993) (introduction of extraneous prior bad acts evidence during deliberations constitutes error of constitutional proportions), cert. denied, 114 S.Ct. 1294 (1994). However, a petitioner is entitled to habeas relief only if it can be established that the constitutional error had "substantial and injurious effect or influence in determining the jury's verdict." Brecht v. Abrahamson, 113 S. Ct. 1710, 1722 & n.9 (1993). Whether the constitutional error was harmless is not a factual determination entitled to the statutory presumption of correctness under 28 U.S.C. S 2254(d). Dickson, 849 F.2d at 405; Marino v. Vasquez, 812 F.2d 499, 504 (9th Cir. 1987).

In a habeas corpus proceeding, a federal court generally "will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment." Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546, 2553-54 (1991). This doctrine applies to bar federal habeas review when the state court has declined to address the petitioner's federal claims because he failed to meet state procedural requirements. Id. at 2254; see also Sochor v. Florida, 504 U.S. 527, 119 L. Ed. 2d 326, 337 (1992). Thus, the independent state grounds doctrine bars the federal courts from reconsidering the issue in the context of habeas corpus review as long as the state court explicitly invokes a state procedural bar rule as a separate basis for its decision. Harris v. Reed, 489 U.S. 255, 264 n.10 (1988).

Habeas petitioners are not entitled to habeas relief based on trial error unless they can establish that it resulted in actual prejudice. O'Neal v. McAninch, 115 S. Ct. 992, 994-95 (1995). It is the responsibility of the court, once it concludes there was error, to determine whether the error affected the judgment. If the court is left in grave doubt, the conviction cannot stand. Id. On a petition for a writ of habeas corpus, the standard of review for a claim of prosecutorial misconduct, like the standard of review for a claim of judicial misconduct, is " 'the narrow one of due process, and not the broad exercise of supervisory power.' " Darden v. Wainwright, 477 U.S. 168, 181 (1986) (quoting Donnelly v.

DeChristoforo, 416 U.S. 637, 642 (1974)). "The relevant question is whether the prosecutor['s] comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.' " Id. (quoting Donnelly, 416 U.S. at 643).

A federal court has no supervisory authority over criminal proceedings in state courts. The only standards we can impose on the states are those dictated by the Constitution. Daye, 712 F.2d at 1571. Objectionable as some actions might be, when considered in the context of the trial as a whole they are not "of sufficient gravity to warrant the conclusion that fundamental fairness has been denied." Id. at 1572. See Gayle v. Scully, 779 F.2d at 807 (trial judge's caustic, sarcastic comments and offensive conduct, although perhaps inconsistent with institutional standards of federal courts, did not violate due process); Daye, 712 F.2d at 1572 (trial judge's skeptical attitude toward defendant's testimony, and his reinforcement of identification evidence by government witnesses, "approached but did not cross the line that permits [a ruling] that the Constitution has been violated").

The fact that a jury instruction is inadequate by Federal Court direct appeal standards does not mean a petitioner who relies on such an inadequacy will be entitled to habeas relief from a state court conviction. Estelle v. McGuire, 502 U.S. 62, 71-72 (1991). In habeas proceedings challenging state court convictions, relief is available only for constitutional violations. Whether a constitutional violation has occurred will depend upon the evidence in the case and the overall instructions given to the jury. See Cupp v. Naughten, 414 U.S. at 147 (constitutionality determined not by focusing on ailing instruction "in artificial isolation" but by considering effect of instruction "in the context of the overall charge."). See also Henderson v. Kibbe, 431 U.S. 145, 155 (1977) (recognizing that "[a]n omission, or an incomplete instruction, is less likely to be prejudicial than a misstatement of the law" and, therefore, a habeas petitioner whose claim of error involves the failure to give a particular instruction bears an "especially heavy" burden).

Shackling, except in extreme forms, is susceptible to harmless error analysis. Castillo v. Stainer, 997 F.2d at 669. In a habeas case dealing with a state court sentence, the question is whether the shackling "had substantial and injurious effect or influence in determining the jury's verdict." Id. (quoting Brecht v. Abrahamson, 113 S. Ct. 1710, 1714 (1993)). If we are in "grave doubt" whether the error affected the verdict, the error is not harmless. O'Neal v. McAninch, 115 S. Ct. 992, 994 (1995).

The risk of doubt, however, is on the state. Id. at 996 (rejecting language in Brecht v. Abrahamson which places on defendant burden of showing prejudice). See Castillo v. Stainer, 983 F.2d at 149 (finding shackling at trial harmless error because defendant only wore waist chain that could not be seen by jury).