

ICHIRO, Plaintiff
v.
BISMARK, Defendant
Civil Action No. 25
Trial Division of the High Court
Palau District
August 17, 1953
See, also, 1 T.T.R. 65

Habeas corpus proceeding, in which plaintiff seeks release from prison after District Administrator revoked parole granted by High Commissioner for breach of condition, following plaintiff's conviction for trespass. The Trial Division of the High Court, Chief Justice E. P. Furber, held that writ will be granted unless plaintiff is given opportunity to be heard on question of revocation of parole and on how much of balance of original term he is required to serve.

1. Constitutional Law—Due Process

No person may be deprived of life, liberty, or property without due process of law. (T.T.C., Sec. 4)

2. Constitutional Law—Due Process

Words of due process clause, when used in Trust Territory Bill of Rights, are presumed to have same meaning as in United States, in those situations to which they are applicable. (T.T.C., Sec. 4)

3. Constitutional Law—Custom—Applicability

Trust Territory Bill of Rights is limited by existing customary law, except as otherwise determined by High Commissioner. (T.T.C., Sec. 4)

4. Constitutional Law—Due Process

Opportunity to be heard is essential element of due process of law. (T.T.C., Sec. 4)

5. Constitutional Law—Due Process

One acting under due process of law guarantee is presumed to intend that discretionary powers granted by him to deprive individual of his liberty will be exercised in accordance with such guarantee, unless contrary intention is indicated. (T.T.C., Sec. 4)

6. Criminal Law—Pardon and Parole

If High Commissioner intends to authorize District Administrator to revoke parole without notice and opportunity to be heard, he will so stipulate under recognized power to make such express provision.

7. Criminal Law—Pardon and Parole

Where there is no stipulation by High Commissioner for revocation of parole without notice and opportunity to be heard, and due process clause is in force at time of attempted revocation, power to revoke parole for alleged breach of conditions cannot be exercised without notice and opportunity to be heard.

8. Criminal Law—Pardon and Parole

Notice and opportunity to be heard are especially important in cases where person who is authorized to revoke parole exercises substantial judgment or discretion.

9. Criminal Law—Pardon and Parole

Where District Administrator is given power to revoke parole, he exercises substantial amount of judgment which might properly be influenced by many factors beyond mere question of whether breach of condition of parole has occurred.

10. Criminal Law—Pardon and Parole

Where power is granted to District Administrator to order party returned to prison for breach of conditions of parole, power is subject to normal requirements of due process of law.

11. Criminal Law—Pardon and Parole

Party who is released on parole is entitled to notice and opportunity to be heard before order returning him to prison is made, and failure to give such notice and opportunity to be heard renders such order defective.

12. Habeas Corpus—Generally

Where party is denied due process of law in revocation of his parole, his discharge on habeas corpus will be delayed in order that defect may be corrected.

FURBER, *Chief Justice*

STATEMENT OF FACTS ADMITTED AND ISSUES RAISED

The following facts were admitted at the hearing held in accordance with an order to show cause why the writ should not be granted:—

The plaintiff Ichiro had been sentenced to terms of imprisonment totalling four and one-half (4 1/2) years commencing May 2, 1949. On June 6, 1942, the High Commissioner placed him on parole in the custody of a parole officer on certain conditions, one of which was that the

plaintiff "conduct himself at all times in a peaceful, moral and lawful manner". The document granting the parole contained the following provision: —

"Upon violation of any of the terms and conditions of this parole by the parolee, the District Administrator, Palau District, or his designated representative, may direct that the parolee be returned to prison for the balance of the term which remains to be served on the date of this parole, or for any part thereof, at hard labor."

On August 10, 1953, the District Administrator, Palau District, issued a written order to the defendant as District Sheriff, directing him to return the plaintiff to prison "for the balance of his original term" and stating that the plaintiff had violated his parole by failure to conduct himself in a peaceful, moral and lawful manner. This order was issued without any notice to plaintiff and without giving him any opportunity to appear and be heard. In accordance with this order the plaintiff was again imprisoned August 11, 1953, and remained so at the time of the hearing.

Attached to the District Administrator's order referred to above was a memorandum from the parole officer stating that the plaintiff had violated the conditions of his parole in that he was convicted of the crime of trespassing on July 11, 1953, and sentenced to one (1) month's imprisonment.

The plaintiff, while not disputing the facts alleged in the parole officer's memorandum mentioned above, claimed that this memorandum was surplusage, the contention of the plaintiff being that, assuming there had been a violation of the conditions of the parole, he was still entitled to notice and an opportunity to be heard before any order could properly be issued for his return to prison. The sole issue presented at the hearing, therefore, was whether the plaintiff was entitled to such notice and opportunity to be heard.

CONCLUSIONS OF LAW

[1] The Trust Territory Bill of Rights at the time of the issuance of the parole involved in this case contained, and had contained for four years before that, the following provision then found in Chapter 5 of Interim Regulation 4-48, and now contained in Section 4 of the Trust Territory Code, "No person shall be deprived of life, liberty, or property, without due process of law". This provision also appears in the Fifth Amendment to the United States Constitution, which is one of the ten amendments that are often referred to as the Bill of Rights of the United States or the Federal Bill of Rights. The Fourteenth Amendment to the United States Constitution declares that no state shall "deprive any person of life, liberty, or property without due process of law". The constitutions of many states in the United States also contain guarantees of due process.

[2] From their use in those amendments, and in state constitutions, and from many court decisions construing them as used there, the words "due process of law" have acquired a widely known general meaning in the United States as guaranteeing a part of the ancient English liberties confirmed in the Magna Charta in 1215 and said to be even older than that. Such famous words when used by Americans in the Trust Territory Bill of Rights must be presumed to mean the same things they do in the United States, in those situations to which they are applicable. American precedents are therefore of special importance in this case.

[3] It should be noted that the Trust Territory Bill of Rights, now contained in Chapter I of the Code is limited by Section 14 of that Chapter, which reads as follows: "Due recognition shall be given to local customs in providing a system of law, and nothing in this Chapter shall be construed to

limit or invalidate any part of the existing customary law, except as otherwise determined by the High Commissioner.”

No question of local customary law, however, is raised in this case.

[4, 5] While it is often stated that no precise definition of due process of law can be given, it is clear from many court decisions that notice and an opportunity to be heard are among the essential elements of it. 12 American Jurisprudence, Constitutional Law, Section 573. This is a basic feature of Anglo-American law and a fundamental principle of liberty and justice as understood in the United States. Accordingly, any person in authority—and especially a U.S. citizen—operating under a Bill of Rights which guarantees due process of law, must be presumed to act with this guarantee in mind, and to expect and intend that discretionary powers granted by him to deprive one of his liberty, will be exercised in accordance with the principles of due process of law, unless a contrary intention is clearly indicated.

[6, 7] It is recognized that the plaintiff had once duly convicted and that the parole was granted as a matter of executive clemency and was accepted by the plaintiff. If the High Commissioner had wished to authorize the District Administrator to revoke the parole without notice and an opportunity to be heard, it would seem he might have so stipulated in the parole. The power to make such express provision has been recognized by numerous courts. 39 American Jurisprudence, Pardon, Reprieve and Amnesty, Section 77. However, the High Commissioner did not so stipulate and the provisions concerning parole in the Interim Regulations which were in force at the time the parole was granted and the corresponding provisions in the Trust Territory Code in force at the time of the attempted revocation, are silent on the

question of whether the revocation may be effected without notice and an opportunity to be heard. Under such circumstances, it has been generally held by American courts that the power to revoke a parole or a conditional pardon for an alleged breach of its conditions cannot be exercised without notice and an opportunity to be heard. 39 American Jurisprudence, Pardon, Reprieve and Amnesty, Sections 95 and 76.

[8, 9] It appears from a number of the American decisions referred to in the above citations that notice and an opportunity to be heard are especially important in cases where the person or body authorized to make the revocation is called upon to exercise substantial judgment or discretion in the matter. In the present instance, no matter how clearly a breach of conditions was established, the parole gave the District Administrator, or his designated representative, discretion not only to determine whether or not the parole should be revoked and the plaintiff returned to prison at all, but also gave the District Administrator, or his designated representative, discretion to determine for what part of the unserved sentence the plaintiff should be returned. Conceivably this would make it possible for the plaintiff to be returned to prison for 16 months and some days as a result of a minor traffic violation on the last day of his parole. Certainly it calls for the exercise of a substantial amount of judgment which might properly be influenced by many factors beyond the mere question of whether a breach of condition had occurred.

[10, 11] Construing the parole in the light of the due process provision in the Bill of Rights and American decisions on the matter, the court rules that the power therein granted to the District Administrator, or his designated representative, to order the plaintiff returned to

prison, is subject to the normal requirements of due process of law, that the plaintiff was entitled to notice and an opportunity to be heard, and that the order returning him to prison without such notice and an opportunity to be heard is accordingly defective.

[12] The defect in the order, however, is one which can be cured fairly promptly and it is not even alleged that there has not been a breach of the conditions of parole in this instance. Under the provisions of the United States statute which is closely similar to the provision in Section 305 of the Trust Territory Code concerning the disposition to be made in habeas corpus proceedings of a person detained, the Supreme Court of the United States has often delayed discharge for a reasonable time, in order that defects which render discharge necessary may be corrected. 25 American Jurisprudence, Habeas Corpus, Section 153, last paragraph. In accordance with that principle and in the interests of substantial justice, the court will exercise its discretion to delay the discharge of the plaintiff in order that the defect indicated may be cured. The court in this instance is allowing longer than would ordinarily be expected because of the fact mentioned by both counsel that the District Administrator is at the present time absent from the District. It is hoped, however, that corrective action will be taken as early as practicable.

JUDGMENT

Both counsel have stipulated in open court that they do not wish to be heard further on the disposition of the plaintiff after the writ has been granted. Counsel for the defendant has indicated he wishes to reserve the right to file a certified copy of the conviction for trespass which is referred to in the memorandum attached to the District Administrator's order to return the plaintiff to prison, and which was the basis for the revoking of the parole.

The filing of such a certified copy, however, is considered surplusage, since for the purposes of this judgment it is assumed that the plaintiff has been convicted of trespass substantially as alleged in that memorandum.

It is ordered, adjudged and decreed that on the expiration of thirty (30) days from today the writ of habeas corpus applied for in this action, be granted and the plaintiff Ichiro be discharged from the detention imposed by order of the District Administrator, Palau District on August 10, 1953, set forth in the application and admitted by the return, *unless, within thirty (30) days from today*, the District Administrator, Palau District, or his designated representative, gives the plaintiff notice and an opportunity to be heard fully on the question of both revocation of his parole and the question of how much, if any of the balance of the term which remained to be served on the date of the parole, the plaintiff is to be required to serve, and the District Administrator, or his designated representative, then makes a new order on the matter specifying clearly for what part, if any, of the sentence which remained to be served on the date of the parole, the plaintiff is to be returned to prison.

It is further ordered, adjudged and decreed that the defendant Bismark promptly file in this action a copy of any such new order received by him from the District Administrator, Palau District, or his designated representative, issued in accordance with the foregoing condition, and notify the plaintiff of such filing; that upon the filing of such copy, this judgment be stayed pending further order of the Court; and that upon showing that the foregoing condition has been complied with, the writ applied for in this action will be denied.