



# UNITED STATES PRISON LAW

SENTENCING TO PRISON, PRISON CONDITIONS,  
AND RELEASE—THE COURT DECISIONS

Selected and with Comments

By

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## VOLUME III Prisoners' Rights

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## CONTENTS

<b>Table of Cases</b> .....	v
<b>Acknowledgments</b> .....	ix
<b>Chapter 1</b> PRINCIPLES GOVERNING PRISONERS' RETENTION OF RIGHTS .....	1
<b>Chapter 2</b> RIGHTS IN LEGAL PROCEEDINGS .....	21
<b>Chapter 3</b> RELIGIOUS RIGHTS, RIGHT TO NONDISCRIM- INATION FOR RACE OR SEX .....	105
(a) Religious Rights .....	105
(b) Racial Rights .....	107
(c) Sexual Equality .....	156
<b>Chapter 4</b> CONTACTS WITH THE OUTSIDE WORLD ...	175
<b>Chapter 5</b> REHABILITATION AND HEALTH CARE .....	221
<b>Chapter 6</b> SEXUAL AND MARRIAGE RIGHTS .....	277
<b>Chapter 7</b> RIGHT TO SELF AND PROPERTY .....	317
<b>Chapter 8</b> RIGHTS TO AN EFFECTIVE ORDER, DISCHARGE .....	383

## EDITOR'S NOTE

At the top of each odd-numbered page at which a case is reproduced, the page number in parentheses following the name of the case is the page number of the case in the report.

A cumulative index will appear at the end of the fifth volume in this series.

## TABLE OF CASES

### Chapter 1    PRINCIPLES GOVERNING PRISONERS' RETENTION OF RIGHTS

Coffin v. Reichard, 143 F.2d 443, 155 A.L.R. 143 (6th Cir. 1944), certiorari denied 325 U.S. 887, 65 S.Ct. 1568, 89 L.Ed. 2001 (1944) .....	5
Morales v. Schmidt, 340 F. Supp. 544 (W.D. Wis. 1972) .....	7
Morales v. Schmidt, 494 F.2d 85 (7th Cir. 1974) .....	17

### Chapter 2    RIGHTS IN LEGAL PROCEEDINGS

Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747, 21 L. Ed. 2d 718 (1969) .....	27
In re Harrell, In re McKinney, In re Ingram, Jr., 2 Cal. 3d 675, 87 Cal. Rptr. 504, 470 P. 2d 640 (1970) .....	47
Cruz v. Hauck, 475 F. 2d 475 (5th Cir. 1973) .....	72
Gilmore v. Lynch, 319 F. Supp. 105 (N.D. Cal. 1970) .....	75
Younger v. Gilmore, 404 U.S. 15, 92 S.Ct. 250, 30 L. Ed. 2d 142 (1971), affirming Gilmore v. Lynch, supra .....	82
Houghton v. Shafer, 392 U.S. 639, 88 S.Ct. 2119 (1968) .....	83
Smith v. Robbins, 454 F. 2d 696 (1st Cir. 1972) ....	86
In re Jordan, In re Grady, 7 Cal. 3d 930, 103 Cal. Rptr. 849, 500 P. 2d 873 (1972) .....	88
Lemons v. United States, 489 F. 2d 344 (3d Cir. 1974) .....	98
Smith v. Ferrell, 429 F. 2d 10 (3d Cir. 1970) .....	101
Smith v. United States, 409 U.S. 1066, 93 S. Ct. 566, 34 L. Ed. 2d 519 (1972) .....	102

### Chapter 3 RELIGIOUS RIGHTS, RIGHT TO NON-DISCRIMINATION FOR RACE OR SEX

#### (a) Religious Rights

Cooper v. Pate, 378 U.S. 546, 84 S.Ct. 1733, 12 L.Ed. 2d 1030 (1964) .....	111
Cruz v. Beto, 405 U.S. 319, 92 S.Ct. 1079, 31 L. Ed. 2d 263 (1972) .....	112
Theriault v. Carlson, Theriault v. Silver, 495 F. 2d 390 (5th Cir. 1974), certiorari denied, 95 S.Ct. 323 (1974) .....	118
Barnett v. Rodgers, Clark v. Rodgers, 410 F. 2d 995 (D.C. Cir. 1969) .....	123

#### (b) Racial Rights

Washington v. Lee, 263 F. Supp. 327 (M.D. Ala. N.D. 1966) .....	131
Lee v. Washington, 390 U.S. 333, 88 S.Ct. 994, 19 L.Ed. 2d 1212 (1968) .....	138
Toles v. Katzenbach, 385 F. 2d 107 (9th Cir. 1967) .....	140
Toles v. Clark, 392 U.S. 662, 88 S.Ct. 2292 20 L.Ed. 2d 1353 (1968) .....	144
Owens v. Brierley, 452 F. 2d 640 (3d Cir. 1971) .....	145
NAACP v. Allen, 493 F. 2d 614 (5th Cir. 1974) .....	148
(c) Sexual Equality	
People v. Andrea, 48 Mich. App. 310, 210 N.W. 2d 474 (1973) .....	157
Wark v. State, 266 A. 2d 62 (Me. 1970), certiorari denied, 400 U.S. 592, 91 S.Ct. 255, 27 L.Ed. 2d 259 (1972) .....	171

### Chapter 4 CONTACTS WITH THE OUTSIDE WORLD

Mabra v. Schmidt, 356 F. Supp. 620 (W.D. Wis. 1973) .....	180
Pell v. Procunier, Procunier v. Hillery, 94 S.Ct. 2800 (1974) .....	194

Saxbe v. Washington Post, 94 S.Ct. 2811 (1974).....	204
--	-----

## Chapter 5 REHABILITATION AND HEALTH CARE

Newman v. State of Alabama, 503 F. 2d 1320 (5th Cir. 1974), rehearing denied 506 F. 2d 1056, certiorari denied, 95 S.Ct. 1680 (1975) ...	227
Tolbert v. Eyman, 434 F. 2d 625 (9th Cir. 1970) .....	240
Fitzke v. Shappell, 468 F. 2d 1072 (6th Cir. 1972) .....	243
Wilson v. Kelley, 294 F. Supp. 1005 (N.D. Ga. 1968), affirmed 393 U.S. 266, 89 S.Ct. 477 (1969).....	249
People ex rel. Kaganovich v. Wilkins, 23 App. Div. 2d 178, 259 N.Y.S. 2d 462 (1965).....	258
People ex rel. Ceschini v. Warden, 30 App. Div. 2d 649, 291 N.Y.S. 200 (1968) .....	263
United States ex rel. Sero v. Preiser, 372 F. Supp. 663 (S.D. N.Y. 1974) .....	264
Nimmo v. Simpson, 370 F. Supp. 103 (E.D. Va. Richmond Div. 1974).....	272

## Chapter 6 SEXUAL AND MARRIAGE RIGHTS

State v. Green, 470 S.W. 2d 565 (Mo. 1971) .....	282
State v. Green, State v. Coleman, 470 S.W. 2d 571 (1971).....	288
People v. Lovercamp, 43 Cal. App. 3d 823, 118 Cal. Rptr. 110 (1974) .....	297
Kish v. County of Milwaukee, 441 F. 2d 901 (7th Cir. 1971) .....	306
People v. Frazier, 256 Cal. App. 2d 630, 64 Cal. Rptr. 447 (1967) .....	311
In re Goalen, 414 U.S. 1148, 94 S.Ct. 905 39 L.Ed. 2d 104 (1974) .....	313

## Chapter 7 RIGHT TO SELF AND PROPERTY

Goldsby v. Carnes, 365 F. Supp. 395 (W.D. Mo. 1973) .....	324
United States ex rel. Katzoff v. McGinnis, 441 F. 2d 558 (2d Cir. 1971) .....	346
In re Van Geldern, In re Eli, 5 Cal. 2d 832, 97 Cal. Rptr. 698, 489 P. 2d 578 (1971) .....	349
Russell v. Bodner, 489 F. 2d 280 (3d Cir. 1973) .....	353
Williams v. Vincent, 508 F. 2d 541 (2d Cir. 1974) .....	355
In re Olson, 37 Cal. App. 3d 783, 112 Cal. Rptr. 579 (1974) .....	360
Goodwin v. Oswald, 462 F. 2d 1237 (2d Cir. 1972) .....	368

## Chapter 8 RIGHT TO AN EFFECTIVE ORDER, DISCHARGE

Battle v. Anderson, 376 F. Supp. 402 (E.D. Okla. 1974) .....	389
Rhem v. Malcolm, 507 F. 2d 333 (2d Cir. Cir. 1974) .....	420
Johnson v. Dye, 175 F. 2d 250 (3d Cir. 1949), reversed, Dye v. Johnson, 338 U.S. 864, 70 S.Ct. 146, 94 L.Ed. 530, rehearing denied 338 U.S. 896, 70 S.Ct. 238, 94 L.Ed. 551 (1949) .....	428
Stone v. Egeler, 506 F. 2d 287 (6th Cir. (1974) .....	437
Harper v. Wall, 85 F.Supp. 783 (D.C. N.J. 1949) .....	439

## CHAPTER 1

### PRINCIPLES GOVERNING PRISONERS' RETENTION OF RIGHTS

Works on prison law usually combine under a single heading what we have dealt with in volume II of this series and what we cover in this volume. We have divided the entire area into two, including in volume II cases and comment on the extent and limits of state power over prisoners. This volume deals with prisoners' rights. As is pointed out in the preface to the series, contained in volume I, "The emphasis in volume III is on rights, emerging, evolving, expanding."

The two cases almost always cited as setting forth the legal principles governing the retention of rights by prisoners are Coffin v. Reichard, in the United States Court of Appeals, and Price v. Johnson, decided by the Supreme Court of the United States, 334 U.S. 266, 68 S. Ct. 1049, 92 L. Ed. 1356 (1948). Price v. Johnson is not set forth; the statement always quoted from it is that "lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." The general statement is most limited as a guide. It was made in a case in which the court held that the circuit court can command that a prisoner be brought before it to argue an appeal, but it can order it or not. The right is not absolute; discretion lies with the court.

The Price v. Johnson statement is usually cited by courts issuing narrow, restrictive holdings on prisoners' rights. Coffin v. Reichard is usually cited as a more liberal view of rights retained. A petition for a writ of habeas corpus had been rejected in the district court. The petition alleged serious mistreatment in a federal institution, the prisoner being subjected to assault, cruelties, and indignities from guards and inmates. The Court of Appeals reversed the district court, ordering the writ filed, and appointing counsel for the prisoner. The Court of Appeals holds that the prisoner has not lost all his rights as a citizen upon incarceration, but that "his incarceration deprives him only of such liberties as the law has ordained he shall suffer for his transgressions" and, the passage that is usually quoted--"A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law." Elsewhere the court says (as we saw in volume II, chapter 3), "The Government has the absolute right to hold prisoners for offenses against it but it

also has the correlative duty to protect them against assault or injury from any quarter while so held."

But aside from their specific holdings, how much guidance in other situations is provided by the generalizations in both of these cases? Morales v. Schmidt, in the United States District Court and in the Court of Appeals, both decisions set forth below, find the generalizations of Coffin v. Reichard, Price v. Johnson, et al, of limited utility. The Court of Appeals bewails "the lack of guidelines in definitive Supreme Court opinions, and the understandable variances in individual philosophies in the present fluxional area of constitutional law." And the district court, having cited Price v. Johnson and Coffin v. Reichard, says, "In all this, I find virtually no guidance to a federal district court today to decide whether the Fourteenth Amendment forbids a state to regulate the life of a prisoner in the specific manner challenged in the lawsuit. To say that the federal courts should generally defer to the judgment of administrators of state correctional facilities, or to say, on the other hand, that inmates of state prisons enjoy some degree of protection from the Fourteenth Amendment, is to express an attitude but little more. I discover in the cases scarcely a single beam or joist in a framework of principles within which a particular constitutional challenge to a particular prison regulation can be decided."

The district court sets forth, accordingly, in the effort to make a path to decide a specific case, and in so doing enunciates a principle that it believes to be more of a guide than the cases usually cited.

### The Primacy of Constitutional Rights

The defendant administrator had not allowed the prisoner to correspond with his sister-in-law when, on reading the prisoner's letter to her, the prison authorities discovered that the plaintiff was the father of an illegitimate child born to his wife's sister, and that he desired to continue a relationship with her. It barred correspondence with her on the ground that the relationship was illicit. The district court enjoined the authorities from restricting the correspondence. The Court of Appeals did not reverse, but remanded for further consideration, having modified the guidelines used and developed by the district court. (The case on remand in the district court, Mabra v. Schmidt, dealing also with the issue of restricted visiting privileges or rights, is set forth in chapter 4, infra.)

But the district court states a new principle governing prisoners' retention of rights, or, the law of prisons. "My thesis is that those convicted of crime should continue to share with the

general population the full latent protection of the Fourteenth Amendment." And later on--"Freedom to use the mails is a First Amendment freedom. . . . In the general population, each individual's interest in corresponding by mail with another is fairly to be characterized as a 'fundamental' interest." The court says that the state must show a compelling governmental interest before the prisoner is deprived of rights a citizen in the general population has. The governmental contention that it has an interest in the survival of the prison as an institution, which survival depends upon the maintenance of internal discipline, is rejected as applied to outgoing correspondence from this prisoner to his wife's sister, even in the face of the rehabilitation justification.

The prison authorities contended that if the correspondence were permitted it would increase the chances that following his release the plaintiff would engage in criminal activity, namely, proscribed sexual behavior. But, says the court, the plaintiff has the same right to criminal behavior as do free people: "I am not persuaded that the government's interest in diminishing the likelihood of such future unlawful sexual activity by one convicted of a past crime, as contrasted with one not convicted of a past crime, is so compelling as to permit the vindication of this interest by interference with this correspondence by the plaintiff."

The Court of Appeals remands without reversing, declaring that the state should not be required to demonstrate a compelling interest but only that the restriction "is related both reasonably and necessarily to the advancement of a justifiable purpose of imprisonment." With the word "necessarily" the Court of Appeals criteria differ little from that of the district court.

The prisoner's constitutional rights are upheld against the two most imposing defenses of administration, security and rehabilitation. Indeed, the defendants had argued that the very existence of prisons was endangered by upholding the prisoner's constitutional rights; "The government has contended in the present case that two of its interests are at stake. The first is its interest in the survival of the prison as an institution."

The court replies: "I am persuaded that the institution of prison probably must end. In many respects it is as intolerable within the United States as was the institution of slavery, equally brutalizing to all involved, equally toxic to the social system, equally subversive of the brotherhood of man, even more costly by some standards, and probably less rational." Elsewhere I have called this principle the primacy of constitutional rights. (Law of Criminal Correction, 1973, index, Prisons.) The constitution guarantees rights; it does not guarantee prisons.

But this is still not more than another statement of the law, albeit an advanced one. In practical effect the principle is applied

in Goldsby v. Carnes in chapter 7, below. We have noted in the last chapter of volume II that in prison law the statement of law, even if implemented by injunction or other strong means, often, perhaps more often than not, does not effectuate the change in the prison and its administration that the statement of law calls for. Is there not, then, a further right, a right to an effective order, even an order granting the prisoner his liberty if his constitutional rights are violated?

We examine this issue in the concluding chapter of this volume, chapter 8. It is deferred because it is necessary to examine first what the courts have declared to be prisoners' rights, and what their decisions have in practice achieved. The two are not the same. Therefore, whereas in volumes I and II the first chapter in each served as a summary for the chapters to follow in each volume, and contained no cases, this chapter does include cases, and the summarization of the subject matter of this volume appears in the last chapter.

**COFFIN v. REICHARD.**

No. 9825

Circuit Court of Appeals, Sixth Circuit.

July 3, 1944.

Appeal from the United States District Court for the Eastern District of Kentucky; Hiram Church Ford, Judge.

Lyman Glover Coffin, in pro. per.

Before HICKS, HAMILTON, and McALLISTER, Circuit Judges.

**PER CURIAM.**

The motion of appellant to file his appeal herein in forma pauperis is granted.

Appellant, appearing in propria persona, presented to the District Judge a petition for leave to file for writ of habeas corpus, which petition the Judge rejected on the ground that upon its face there was no showing petitioner was entitled to the writ. It appears from the petition that on February 27, 1942, petitioner was indicted in the United States District Court for the Western District of Missouri, Western Division, for a violation of Title 18 U.S.C.A. § 28, and on March 11, 1942, he plead guilty to the indictment and received a sentence which was suspended and the petitioner placed on probation and that on

May 10, 1943, the probation was revoked and the suspension of sentence set aside and petitioner was ordered by the court to serve the original sentence in an institution designated by the Attorney General of the United States, and that pursuant to the judgment and sentence of the court, petitioner has since been confined in the United States Public Health Service Hospital at Lexington, Kentucky. It also appears that petitioner was charged in the indictment with forging the name of Dr. George L. Ivey, to a prescription for morphine sulphate. Petitioner alleges that on January 31, 1944, he discovered that the name, Dr. Ivey, was a fiction. Petitioner further alleges that at the time he plead guilty he was physically ill and mentally incapable of discussing intelligently with the attorney appointed by the court, his defense or what plea he should enter and that the narcotic agent obtained a confession from him while petitioner was being held incommunicado and before he had been allowed to see an attorney or any member of his family.

[1,2] The petition for the writ is not to be scrutinized with technical nicety but should be liberally applied. In our opinion the facts alleged in the petition insofar as they relate to the physical and mental condition of the petitioner at the time he entered his plea and signed his confession are sufficient to require the court to issue a rule on respondent to show cause why a writ should not issue. *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461, 146 A.L.R. 357; *Walker v. Johnston*, 312 U.S. 275, 61 S.Ct. 574, 85 L.Ed. 830; *Holiday v. Johnston*, 313 U.S. 342, 550, 61 S.Ct. 1015, 85 L.Ed. 1392; *Waley v. Johnston*, 316 U.S. 101, 62 S.Ct. 964, 86 L.Ed. 1302.

[3] Appellant tendered in this court an original petition for a writ of habeas corpus in which he particularizes facts showing that while confined in the United States Public Health Service Hospital at Lexington, Kentucky, and in the custody of appellee, Dr. John D. Reichard, he suffered bodily harm and injuries and was subjected to assaults, cruelties and indignities from guards and his co-inmates. The detail of these incidents is unnecessary to a decision of the issue before us. Suffice it to say, the acts of which appellant complains, if true, were contrary to the regulations of the institution in which he was confined and were not necessary for the proper punishment of an insubordinate inmate to secure his submission and obedience to its reasonable rules and regulations.

This petition will be treated as an amendment to appellant's original petition and will be referred to the district court for its consideration. *Ex parte Hull*, 312 U.S. 546, 61 S.Ct. 640, 85 L.Ed. 1034.

[4] Any unlawful restraint of personal liberty may be inquired into on habeas corpus. In *re Bonner*, 151 U.S. 242, 14 S.Ct. 323, 38 L.Ed. 149. This rule applies although a person is in lawful custody. His conviction and incarceration deprive him only of such liberties as the law has ordained he shall suffer for his transgressions.

The Government has the absolute right to hold prisoners for offenses against it but it also has the correlative duty to protect them against assault or injury from any quarter while so held. A prisoner is entitled to the writ of habeas corpus when, though lawfully in custody, he is deprived of some right to which he is lawfully entitled even in his confinement, the deprivation of which serves to make his imprisonment more burdensome than the law allows or curtails his liberty to a greater extent than the law permits. *Logan v. United States*, 144 U.S. 263, 12 S.Ct. 617, 36 L.Ed. 429.

[5] A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law. While the law does take his liberty and imposes a duty of servitude and observance of discipline for his regulation and that of other prisoners, it does not deny his right to personal security against unlawful invasion.

When a man possesses a substantial right, the courts will be diligent in finding a way to protect it. The fact that a person is legally in prison does not prevent the use of habeas corpus to protect his other inherent rights.

[6] 28 U.S.C.A. § 461 authorizes the court in habeas corpus proceedings to dispose of the party "as law and justice require." The judge is not limited to a simple remand or discharge of the prisoner, but he may remand with directions that the prisoner's retained civil rights be respected, or the court may order the prisoner placed in the custody of the Attorney General of the United States for transfer to some other institution.

The order of the District Judge is reversed and the cause remanded with directions to file appellant's petition for a writ of habeas corpus and the amendment thereto, to appoint counsel to represent him and to issue a show cause order directed to appellee.