

IN RE YUSIM MINOR ON HABEAS CORPUS

Civil Appeal No. 99

Appellate Division of the High Court

April 9, 1976

Appeal by government from trial court's order granting writ of habeas corpus on ground of post-conviction delay in disposition of applicant's criminal appeal. The Appellate Division of the High Court, Hefner, Associate Justice, affirmed trial court's order releasing applicant from custody but reversed that portion of court's order which dismissed criminal charges pending on appeal.

Habeas Corpus—Purpose and Scope

Scope and purpose of writ of habeas corpus is to inquire into cause of person's imprisonment and restraint. (9 TTC § 101)

2. Habeas Corpus—Effect of Grant of Writ

If court finds, after hearing, that writ of habeas corpus should issue, person may be discharged from custody. (9 TTC § 106)

3. Habeas Corpus—Effect of Grant of Writ

In habeas corpus proceeding, where trial court found that writ of habeas corpus should issue on ground of post-conviction delay in disposition of applicant's appeal of criminal conviction, court could not dismiss criminal charges against applicant, which were pending on appeal. (9 TTC § 106)

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Before BROWN, *Associate Justice*, HEFNER, *Associate Justice* and WILLIAMS, *Associate Justice*

HEFNER, *Associate Justice*

The appellee, a defendant in a criminal case on appeal, applied for a writ of habeas corpus. The basis of the application was the post conviction delay in the disposition of his appeal.

After a hearing on the application for the writ, the Court not only issued the writ of habeas corpus, releasing the defendant from custody, but the Court dismissed the criminal charges by which the defendant was convicted, and from which he had appealed.

The Government appealed the Order on several grounds, but at the argument of this matter, it only contested the dismissal of the charges asserting that the Court had no authority to do anything but release the defendant from custody. We agree.

[1-3] The scope and purpose of the writ of habeas corpus is to inquire into the cause of a person's imprisonment and restraint. 9 TTC § 101. If the Court finds, after a hearing, that a writ should issue, the person may be discharged from custody. 9 TTC § 106. However, the Court cannot

reach over into the criminal proceedings, as it did in this case, and dismiss the charges pending in the criminal case on appeal.

The proper procedure is to file a motion to dismiss in the criminal proceedings itself.

The Court's Order releasing the defendant from custody is affirmed, but the portion of the Order dismissing the criminal charges is reversed.