CHAPTER 17

Habeas Corpus

**SECTION 17‑17‑10.** Persons entitled to writ of habeas corpus.

 If any person shall be or stand committed or detained for any crime, unless (a) for felony the punishment of which is death or treason, plainly expressed in the warrant of commitment, (b) charged as accessory before the fact to treason or felony the punishment of which is death or (c) charged with suspicion of treason or felony which is punishable with death, which shall be plainly expressed in the warrant of commitment, he shall be entitled to the writ of habeas corpus.

HISTORY: 1962 Code Section 17‑351; 1952 Code Section 17‑351; 1942 Code Section 1047; 1932 Code Section 1047; Cr. P. ‘22 Section 134; Cr. C. ‘12 Section 116; Cr. C. ‘02 Section 89; G. S. 2322; R. S. 89; 31 ch. 2 c. 2; 1679 (1) 118, 123; 1839 (11) 38.

CROSS REFERENCES

Court rules regarding issuance of original writ of habeas corpus, see Rules of Civil Procedure, Rule 65.

Right of mentally deficient persons to writ of habeas corpus, see Section 44‑26‑20.

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Forms

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United States Supreme Court Annotations

Counsel, substitution of appointed counsel for capital defendants and habeas petitioners is governed by “interests of justice” standard, see Martel v. Clair, 2012, 132 S.Ct. 1276, 565 U.S. 648, 182 L.Ed.2d 135. Criminal Law 1825; Sentencing and Punishment 1737

Death penalty, habeas review, exhaustion of state remedies, denial of postconviction relief, petition for certiorari, dismissal of petition, see Roper v. Weaver, 2007, 127 S.Ct. 2022, 550 U.S. 598, 167 L.Ed.2d 966.

Due process, federal habeas review, death penalty, suppression of exculpatory evidence, impact on sentence, see Cone v. Bell, 2009, 129 S.Ct. 1769, 556 U.S. 449, 173 L.Ed.2d 701, on remand 2010 WL 2270191.

Fair trial, habeas review, scope of relief, spectator conduct at trial, wearing buttons depicting murder victim, unreasonable application of federal law, see Carey v. Musladin, 2006, 127 S.Ct. 649, 549 U.S. 70, 166 L.Ed.2d 482, on remand 555 F.3d 830.

Habeas corpus, appellate counsel’s failure to raise forfeited Confrontation Clause claim as to admission of anonymous tip did not warrant federal habeas relief for state prisoner, see Woods v. Etherton, 2016, 136 S.Ct. 1149, 194 L.Ed.2d 333. Habeas Corpus 481

Habeas corpus, California’s procedural bar for issues first raised in collateral proceedings was adequate to bar federal habeas relief, see Johnson v. Lee, 2016, 136 S.Ct. 1802, 195 L.Ed.2d 92, on remand 842 F.3d 1293. Habeas Corpus 403, 422

Habeas corpus, Claim of actual innocence can overcome statute of limitations for state prisoner’s initial petition for federal habeas relief, see McQuiggin v. Perkins, 2013, 133 S.Ct. 1924, 185 L.Ed.2d 1019, on remand 2013 WL 4776285. Habeas Corpus 603.18

Habeas corpus, clearly established federal law for habeas purposes is law at time of state‑court adjudication on merits, see Greene v. Fisher, 2011, 132 S.Ct. 38, 565 U.S. 34, 181 L.Ed.2d 336. Habeas Corpus 450.1, 452

Habeas corpus, counsel’s brief absence from courtroom during testimony concerning codefendants did not warrant habeas relief based on per se ineffective assistance of counsel, see Woods v. Donald, 2015, 135 S.Ct. 1372, 191 L.Ed.2d 464, on remand 608 Fed.Appx. 387, 2015 WL 3756505. Habeas Corpus 488

Habeas corpus, Court of Appeals was wrong to reach merits of death row inmate’s federal habeas claim under miscarriage of justice exception to procedural default, see Jenkins v. Hutton, 2017, 137 S.Ct. 1769, 198 L.Ed.2d 415. Habeas Corpus 401

Habeas corpus, deferential federal habeas review applied to state court’s summary denial of ex post facto claim, see Kernan v. Hinojosa, 2016, 136 S.Ct. 1603, 194 L.Ed.2d 701. Habeas Corpus 770

Habeas corpus, Denial of request for reappointment of counsel for pre‑appeal new‑trial motion in state prosecution was not contrary to Supreme Court’s Sixth Amendment principles, see Marshall v. Rodgers, 2013, 133 S.Ct. 1446, 569 U.S. 58, 185 L.Ed.2d 540, rehearing denied 133 S.Ct. 2408, 185 L.Ed.2d 1117, on remand 2013 WL 3819551. Habeas Corpus 484

Habeas corpus, evidence supported habeas petitioner’s murder conviction under Jackson v. Virginia sufficiency standard, see Coleman v. Johnson, 2012, 132 S.Ct. 2060, 566 U.S. 650, 182 L.Ed.2d 978, rehearing denied 133 S.Ct. 74, 567 U.S. 956, 183 L.Ed.2d 714, on remand 518 Fed.Appx. 106, 2013 WL 1908295. Habeas Corpus 493(3)

Habeas corpus, Excluding extrinsic evidence impeaching complaining witness’ prior rape allegations did not violate clearly established law, see Nevada v. Jackson, 2013, 133 S.Ct. 1990, 186 L.Ed.2d 62, on remand 723 F.3d 1114. Habeas Corpus 492

Habeas corpus, Failure to instruct jury to draw no adverse inference from defendant’s decision not to testify at penalty phase of capital murder trial did not warrant federal habeas relief, see White v. Woodall, 2014, 134 S.Ct. 1697, 188 L.Ed.2d 698, rehearing denied 134 S.Ct. 2835, 189 L.Ed.2d 799. Habeas Corpus 498, 508

Habeas corpus, federal appellate courts can in exceptional cases raise forfeited limitations defenses to state prisoners’ habeas petitions, see Wood v. Milyard, 2012, 132 S.Ct. 1826, 566 U.S. 463, 182 L.Ed.2d 733, on remand 721 F.3d 1190. Habeas Corpus 848

Habeas corpus, federal claim not expressly addressed by state court is rebuttably presumed to have been adjudicated on the merits, see Johnson v. Williams, 2013, 133 S.Ct. 1088, 568 U.S. 289, 185 L.Ed.2d 105, rehearing denied 133 S.Ct. 1858, 185 L.Ed.2d 858, on remand 720 F.3d 1212. Habeas Corpus 769

Habeas corpus, federal habeas court did not deferentially review evidentiary challenge to mental health evidence in murder prosecution, see Parker v. Matthews, 2012, 132 S.Ct. 2148, 567 U.S. 37, 183 L.Ed.2d 32. Habeas Corpus 493(3)

Habeas corpus, federal habeas court failed to address state court’s ruling that undisclosed evidence was ambiguous, see Wetzel v. Lambert, 2012, 132 S.Ct. 1195, 565 U.S. 520, 182 L.Ed.2d 35, on remand 537 Fed.Appx. 78, 2013 WL 5291119. Habeas Corpus 791

Habeas corpus, Federal habeas court’s determination that counsel was ineffective in advising plea withdrawal was not “doubly deferential” to state court and counsel, see Burt v. Titlow, 2013, 134 S.Ct. 10, 187 L.Ed.2d 348. Habeas Corpus 773

Habeas corpus, federal habeas relief was not warranted for murder conviction based on confession after unwarned interrogation, see Bobby v. Dixon, 2011, 132 S.Ct. 26, 565 U.S. 23, 181 L.Ed.2d 328, on remand 731 F.3d 539, withdrawn from bound volume. Habeas Corpus 490(3)

Habeas corpus, for‑cause excusal based on prospective juror’s views on capital punishment did not warrant federal habeas relief, see White v. Wheeler, 2015, 136 S.Ct. 456, 193 L.Ed.2d 384, on remand 852 F.3d 509, rehearing denied. Habeas Corpus 496

Habeas corpus, ineffective assistance of counsel in state collateral review proceeding may excuse procedurally defaulted federal habeas claim of ineffective assistance of trial counsel, see Martinez v. Ryan, 2012, 132 S.Ct. 1309, 566 U.S. 1, 182 L.Ed.2d 272, on remand 680 F.3d 1160. Habeas Corpus 406

Habeas corpus, ineffective assistance of state postconviction counsel does not provide cause to excuse procedurally defaulted claim of ineffective assistance of appellate counsel, see Davila v. Davis, 2017, 137 S.Ct. 2058, 198 L.Ed.2d 603. Habeas Corpus 406

Habeas corpus, limitations period for filing federal habeas petition started when period for seeking direct appeal in state courts expired, see Gonzalez v. Thaler, 2012, 132 S.Ct. 641, 565 U.S. 134, 181 L.Ed.2d 619. Habeas Corpus 603.5

Habeas corpus, postconviction counsel’s abandonment was cause for state death row inmate’s procedural default of federal habeas claim, see Maples v. Thomas, 2012, 132 S.Ct. 912, 565 U.S. 266, 181 L.Ed.2d 807, on remand 460 Fed.Appx. 860, 2012 WL 752467. Habeas Corpus 406

Habeas corpus, see Walker v. Martin, 2011, 131 S.Ct. 1120, 562 U.S. 307, 179 L.Ed.2d 62.

Habeas corpus, aliens detained as enemy combatants, right to challenge legality of detention, see Boumediene v. Bush, 2008, 128 S.Ct. 2229, 553 U.S. 723, 171 L.Ed.2d 41, on remand 282 Fed.Appx. 844, 2008 WL 2661939, on remand 282 Fed.Appx. 844, 2008 WL 2661942.

Habeas corpus, Antiterrorism and Effective Death Penalty Act, ineffective assistance, see Cullen v. Pinholster, 2011, 131 S.Ct. 1388, 563 U.S. 170, 179 L.Ed.2d 557, rehearing denied 131 S.Ct. 2951, 563 U.S. 1029, 180 L.Ed.2d 239.

Habeas corpus, capital murder trial, alleged judge, juror and bailiff misconduct, state denial of relief based on res judicata, bar to federal habeas review, see Wellons v. Hall, 2010, 130 S.Ct. 727, 558 U.S. 220, 175 L.Ed.2d 684, on remand 603 F.3d 1236.

Habeas corpus, collateral review, see Wall v. Kholi, 2011, 131 S.Ct. 1278, 562 U.S. 545, 179 L.Ed.2d 252.

Habeas corpus, counsel, effective assistance, see Wood v. Allen, 2010, 130 S.Ct. 841, 558 U.S. 290, 175 L.Ed.2d 738, rehearing denied 130 S.Ct. 1942, 559 U.S. 1032, 176 L.Ed.2d 405.

Habeas corpus, death sentence, notice, see Magwood v. Patterson, 2010, 130 S.Ct. 2788, 561 U.S. 320, 177 L.Ed.2d 592, on remand 664 F.3d 1340.

Habeas corpus, double jeopardy, mistrials, duty of judge to declare mistrial, see Renico v. Lett, 2010, 130 S.Ct. 1855, 559 U.S. 766, 176 L.Ed.2d 678.

Habeas corpus, federal courts may not issue writs of habeas corpus to state prisoners whose confinement does not violate federal law, see Wilson v. Corcoran, 2010, 131 S.Ct. 13, 562 U.S. 1, 178 L.Ed.2d 276, on remand 651 F.3d 611.

Habeas corpus, fugitive defendant, discretionary state procedural rule allowing forfeiture of post‑verdict motions of escaped defendants, bar to federal habeas review, see Beard v. Kindler, 2009, 130 S.Ct. 612, 558 U.S. 53, 175 L.Ed.2d 417, on remand 642 F.3d 398.

Habeas corpus, jury instructions on multiple theories of guilt, one invalid theory, structural error, harmless error review, see Hedgpeth v. Pulido, 2008, 129 S.Ct. 530, 555 U.S. 57, 172 L.Ed.2d 388, on remand 559 F.3d 1040, on remand 629 F.3d 1007.

Habeas corpus, state capital prisoners had no absolute right to staying of federal habeas proceedings while incompetent to assist counsel, see Ryan v. Gonzales, 2013, 133 S.Ct. 696, 568 U.S. 57, 184 L.Ed.2d 528, on remand 518 Fed.Appx. 441, 2013 WL 1663308. Habeas Corpus 679

Habeas corpus, state court did not unreasonably apply federal Confrontation Clause law in determining that complainant was unavailable to testify at retrial, see Hardy v. Cross, 2011, 132 S.Ct. 490, 565 U.S. 65, 181 L.Ed.2d 468, rehearing denied 132 S.Ct. 1626, 565 U.S. 1230, 182 L.Ed.2d 224, on remand 466 Fed.Appx. 548, 2012 WL 1681825. Habeas Corpus 481

Habeas corpus, state court’s decision that evidence supported jury’s conclusion that child died from shaken baby syndrome was not unreasonable application of Supreme Court’s Jackson v. Virginia standard for sufficiency of evidence, see Cavazos v. Smith, 2011, 132 S.Ct. 2, 565 U.S. 1, 181 L.Ed.2d 311, rehearing denied 132 S.Ct. 1077, 565 U.S. 1149, 181 L.Ed.2d 794, on remand 667 F.3d 1308. Habeas Corpus 493(3)

Habeas corpus, State court’s determination, that any error in excluding counsel from part of Batson hearing was harmless, should have survived federal habeas review, see Davis v. Ayala, 2015, 135 S.Ct. 2187, 192 L.Ed.2d 323, rehearing denied 136 S.Ct. 14, 192 L.Ed.2d 983, on remand 813 F.3d 880. Habeas Corpus 770, 773

Habeas Corpus, State court’s factual finding that death‑row inmate was not entitled to hearing on Atkins claim of mental retardation was unreasonable, see Brumfield v. Cain, 2015, 135 S.Ct. 2269, 192 L.Ed.2d 356, on remand 808 F.3d 1041. Habeas Corpus 477, 508

Habeas corpus, state limits on successive petitions, preemption by International Court of of Justice decision interpreting treaty rights and President’s memo, see Medellin v. Texas, U.S.Tex.2008, 128 S.Ct. 1346, 552 U.S. 491, 170 L.Ed.2d 190, for denial of stay of execution, see 129 S.Ct. 360, 554 U.S. 759, 171 L.Ed.2d 833.

Habeas corpus, sufficiency of record evidence, reliability of DNA evidence, unreasonable application of federal law standard, see McDaniel v. Brown, 2010, 130 S.Ct. 665, 558 U.S. 120, 175 L.Ed.2d 582.

Habeas corpus, timeliness of petition, state court’s grant of right to file out‑of‑order direct appeal, finality of conviction, see Jimenez v. Quarterman, 2009, 129 S.Ct. 681, 555 U.S. 113, 172 L.Ed.2d 475, on remand 367 Fed.Appx. 489, 2010 WL 321737.

Habeas corpus petitions, statute of limitations, equitable tolling, see Holland v. Florida, 2010, 130 S.Ct. 2549, 560 U.S. 631, 177 L.Ed.2d 130, on remand 613 F.3d 1053.

Habeas corpus review, statute of limitations, tolling during pendency of certiorari petition in the Supreme Court seeking review of denial of state postconviction relief, see Lawrence v. Florida, 2007, 127 S.Ct. 1079, 549 U.S. 327, 166 L.Ed.2d 924.

Habeas corpus review, successive petitions, jurisdiction, permission to file second petition, unexhausted claims, see Burton v. Stewart, 2007, 127 S.Ct. 793, 549 U.S. 147, 166 L.Ed.2d 628, rehearing denied 127 S.Ct. 1394, 549 U.S. 1261, 167 L.Ed.2d 175.

Indigents, federally appointed habeas counsel, representation of death row defendant in state clemency proceedings, see Harbison v. Bell, 2009, 129 S.Ct. 1481, 556 U.S. 180, 173 L.Ed.2d 347.

Jury trial, habeas corpus, jury selection process, see Berghuis v. Smith, 2010, 130 S.Ct. 1382, 559 U.S. 314, 176 L.Ed.2d 249, on remand 505 Fed.Appx. 560, 2012 WL 5869934.

Release from detention as rendering criminal case moot so as to preclude review by habeas corpus. 1 L Ed 2d 1876.

Right to counsel, effective assistance, plea hearing, appearance via speaker phone, habeas corpus relief, see Wright v. Van Patten, 2008, 128 S.Ct. 743, 552 U.S. 120, 169 L.Ed.2d 583, on remand 281 Fed.Appx. 607, 2008 WL 2415909.

Right under the Federal Constitution of indigent defendant in criminal case to aid of state as regards habeas corpus. 6 L Ed 2d 1295, 21 L Ed 2d 879.

NOTES OF DECISIONS

In general 1

Actions and proceedings 6

Effective assistance of counsel 2

Exhaustion of state remedies 4

Federal courts 5

Illiterate inmates 3

Pleadings 7

Presumptions and burden of proof 8

Review 9

1. In general

The writ of habeas corpus cannot be used as substitute for writ of error. State v Garlington (1900) 56 SC 413, 34 SE 689. Ex parte Bond (1877) 9 SC 80. State v Lundy (1883) 19 SC 601. State v Williams (1982) 32 SC 583, 10 SE 551.

Standard for obtaining habeas relief, of showing that state court unreasonably applied clearly established federal law, is difficult to meet: to obtain habeas corpus relief from a federal court, a state prisoner must show that the challenged state‑court ruling rested on an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement. Metrish v. Lancaster, 2013, 133 S.Ct. 1781, 185 L.Ed.2d 988. Habeas Corpus 450.1

Michigan Court of Appeals’ decision that retroactive application of a Michigan Supreme Court decision abolishing the diminished capacity defense did not violate due process was not an unreasonable application of federal law, and thus did not warrant habeas relief, even though habeas petitioner was able to present such defense at his first trial; decision abolishing defense was not unexpected or indefensible, as it involved interpretation of an unambiguous statute for first time by state’s highest court. Metrish v. Lancaster, 2013, 133 S.Ct. 1781, 569 U.S. 351, 185 L.Ed.2d 988. Habeas Corpus 477

Habeas corpus is a statutory and constitutional remedy which can be suspended only in extremely limited circumstances. Hunter v. State (S.C. 1994) 316 S.C. 105, 447 S.E.2d 203. Habeas Corpus 911

Not every intervening decision or constitutional error justifies the issuance of a writ of habeas corpus; the test is whether there has been a violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. Hunter v. State (S.C. 1994) 316 S.C. 105, 447 S.E.2d 203. Habeas Corpus 442; Habeas Corpus 447

Not every constitutional error at trial will justify issuance of a writ of habeas corpus. Rather, the writ will issue only under circumstances where there has been a “violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice.” Butler v. State (S.C. 1990) 302 S.C. 466, 397 S.E.2d 87, certiorari denied 111 S.Ct. 442, 498 U.S. 972, 112 L.Ed.2d 425. Habeas Corpus 447

A mentally retarded death row inmate was entitled to habeas corpus relief where the judge at his trial had made comments to the effect that, though he would charge the jury that they could not consider the defendant’s failure to testify, the jury would most likely ignore this instruction. Butler v. State (S.C. 1990) 302 S.C. 466, 397 S.E.2d 87, certiorari denied 111 S.Ct. 442, 498 U.S. 972, 112 L.Ed.2d 425.

Habeas corpus is not a substitute for appeal. Wheeler v. State (S.C. 1966) 247 S.C. 393, 147 S.E.2d 627. Habeas Corpus 288

Where a nonjurisdictional issue has been presented to and ruled upon by the trial court, review of that ruling, if desired by the defendant, must be had by appeal and may not be had by habeas corpus. Wheeler v. State (S.C. 1966) 247 S.C. 393, 147 S.E.2d 627. Habeas Corpus 287.1

Habeas corpus cannot be used as a substitute for appeal or other remedial procedure for the correction of errors of law of which a defendant had an opportunity to avail himself. Tyler v. State (S.C. 1965) 247 S.C. 34, 145 S.E.2d 434. Habeas Corpus 271; Habeas Corpus 288

Where a decision in defendant’s favor would not entitle him to release from confinement, the writ of habeas corpus is not available to test the legality of his sentence. Shelnut v. State (S.C. 1965) 247 S.C. 41, 145 S.E.2d 420. Habeas Corpus 221

The inquiry on habeas corpus is limited to the legality of the prisoner’s present detention. McCall v. State (S.C. 1965) 247 S.C. 15, 145 S.E.2d 419. Habeas Corpus 687

And the only remedy which can be granted on habeas corpus is release from custody, whether absolute or conditional. McCall v. State (S.C. 1965) 247 S.C. 15, 145 S.E.2d 419.

The writ of habeas corpus is not available to test the legality of a conviction or sentence where a decision in the prisoner’s favor will leave him in lawful confinement under another existing sentence. McCall v. State (S.C. 1965) 247 S.C. 15, 145 S.E.2d 419. Habeas Corpus 227

Code 1962 Section 32‑915 does not purport, either expressly or by necessary implication, to broaden the scope of habeas corpus. It merely reaffirms that the writ is available to test not the factual issue of the petitioner’s sanity but the legality of the proceedings or judgment under which he was committed and is being confined. Douglas v. Hall (S.C. 1956) 229 S.C. 550, 93 S.E.2d 891. Habeas Corpus 537.1

The prisoner himself can waive his presence at the return of the writ. State v. Jones (S.C. 1890) 32 S.C. 583, 10 S.E. 577.

2. Effective assistance of counsel

California’s time limitation on applications for habeas corpus relief, pursuant to which prisoner must seek relief without substantial delay, was independent and adequate state law ground for the California Supreme Court’s denial of state habeas petition that prisoner filed nearly five years after his conviction became final, and that was premised on same ineffective assistance claims that were the subject of prisoner’s federal habeas petition, despite indeterminate nature of time limitation and state court’s ability to bypass timeliness assessment and summarily dismiss petition on merits if that was the easier path; accordingly, district court could not consider ineffective assistance claims; abrogating Townsend v. Knowles, 562 F.3d 1200. Walker v. Martin, 2011, 131 S.Ct. 1120, 562 U.S. 307, 179 L.Ed.2d 62. Habeas Corpus 422; Habeas Corpus 603.4

A lack of effective assistance of counsel must be of such nature as to shock the conscience of the court and make the trial proceedings a farce and mockery of justice in order to suffice as grounds for the issuance of a writ of habeas corpus. Welch v. MacDougall (S.C. 1965) 246 S.C. 258, 143 S.E.2d 455. Habeas Corpus 486(1)

The mere allegations of mistake of counsel, standing alone, are not grounds for the issuance of a writ of habeas corpus. Crosby v. State (S.C. 1962) 241 S.C. 40, 126 S.E.2d 843.

3. Illiterate inmates

Prison policy prohibiting inmates from offering legal assistance to other inmates did not conflict with right of habeas corpus as applied to prisoner who was sanctioned for offering legal assistance to illiterate inmate in preparing post‑conviction petition, where prison had law library and library clerks. Howard v. South Carolina Dept. of Corrections (S.C. 2012) 399 S.C. 618, 733 S.E.2d 211. Habeas Corpus 690; Prisons 267

If there is another source of legal assistance for illiterate inmates, then there is no violation of the rule prohibiting a prisoner from providing legal assistance to another inmate for the purposes of asserting a habeas claim, as there is no independent right to provide legal assistance to another inmate. Howard v. South Carolina Dept. of Corrections (S.C. 2012) 399 S.C. 618, 733 S.E.2d 211. Habeas Corpus 690; Prisons 267

4. Exhaustion of state remedies

The petitioner was required to exhaust postconviction remedies and move for postconviction relief as prerequisite to filing a petition for writ of habeas corpus under Section 17‑17‑10 and SC Const Art I Section 18. Pennington v. State (S.C. 1994) 312 S.C. 436, 441 S.E.2d 315. Habeas Corpus 285.1

5. Federal courts

There is no reason for a federal habeas court to reject California’s Dixon procedural bar, under which a defendant procedurally defaults a claim raised for the first time on state collateral review if he could have raised it earlier on direct appeal, simply because a state court may opt to bypass the Dixon assessment and summarily dismiss a petition on the merits, if that is the easier path. Johnson v. Lee, 2016, 136 S.Ct. 1802, 195 L.Ed.2d 92, on remand 842 F.3d 1293. Habeas Corpus 403

In determining whether judgment in state court habeas proceeding rested on adequate and independent state law ground, and thus precluded United States Supreme Court from having subject‑matter jurisdiction over petitioner’s Batson claim, United States Supreme Court would construe petition for writ of certiorari as seeking review of Georgia Supreme Court’s order denying him certificate of probable cause, since Georgia Supreme Court Rules provided that such certificate “will be issued where there is arguable merit,” decision by Georgia Supreme Court that petitioner’s appeal had no arguable merit would seem to be decision on merits of his claim, Georgia Supreme Court’s order in such circumstance was subject to review in United States Supreme Court pursuant to writ of certiorari, and there was no positive assurance from Georgia Supreme Court that its order was not decision on merits. Foster v. Chatman, 2016, 136 S.Ct. 1737, 195 L.Ed.2d 1. Federal Courts 3164(4)

Georgia Supreme Court’s order, denying, without explanation, certificate of probable cause, thus barring petitioner from appealing decision of Georgia appellate court denying habeas relief on ground of res judicata, did not rest on adequate and independent state law ground, and thus did not preclude United States Supreme Court from having subject‑matter jurisdiction over petitioner’s Batson claim, where Georgia habeas court, in order to determine whether petitioner had shown change in facts sufficient to overcome res judicata bar, engaged in four pages of what it termed a Batson analysis, in which it evaluated the original trial record and habeas record, and ultimately concluded that petitioner’s renewed Batson claim was “without merit.” Foster v. Chatman, 2016, 136 S.Ct. 1737, 195 L.Ed.2d 1. Federal Courts 3164(4)

State habeas court, in addressing Batson objection, acted properly in admitting prosecution’s file into evidence, while reserving determination as to what weight it was going to put on documents in file in light of objections urged by state, despite questions about provenance of some documents, including document that did not indicate author of notes concerning black prospective jurors, where all documents in file were authored by someone in district attorney’s office, and any uncertainties concerning the documents were pertinent only as potential limits on their probative value. Foster v. Chatman, 2016, 136 S.Ct. 1737, 195 L.Ed.2d 1. Habeas Corpus 753

Strong evidence rebutted presumption that last reasoned opinion from a state court, i.e., state habeas trial court’s decision explicitly imposing procedural default, based on improper venue, of state prisoner’s federal ex post facto claim regarding retroactive application of state statute modifying sentence credit‑earning status of prison‑gang members and associates in segregated housing, was not silently disregarded when state’s highest court, pursuant to prisoner’s original petition for state habeas relief, later summarily denied relief, and thus, summary denial by state’s highest court was an adjudication on the merits, for which federal habeas review was deferential; improper venue could not possibly have been the ground for state high court’s summary denial, because state’s high court was the only venue in which prisoner could have filed original petition for state habeas relief. Kernan v. Hinojosa, 2016, 136 S.Ct. 1603, 194 L.Ed.2d 701. Habeas Corpus 770

State Supreme Court’s determination that trial court’s failure to give a blanket no‑adverse‑inference instruction following defendant’s failure to testify at the penalty phase of his capital murder trial did not violate the Fifth Amendment privilege against self‑incrimination was not objectively unreasonable, precluding federal habeas relief. White v. Woodall, 2014, 134 S.Ct. 1697, 188 L.Ed.2d 698, rehearing denied 134 S.Ct. 2835, 189 L.Ed.2d 799. Habeas Corpus 498; Habeas Corpus 508

A person restrained of her liberty by State process cannot maintain habeas corpus action in a Federal district court to determine whether such restraint constitutes a violation of the provisions of the United States Constitution and amendments thereto without first having exhausted every remedy available to her in the State courts. Rikard v. South Carolina State Hospital, 1962, 202 F.Supp. 763. Habeas Corpus 319.1

6. Actions and proceedings

It is usual for the court to try all issues of law and facts upon the petition, return and supporting affidavits in as summary a manner as circumstances permit. A reference may, at the discretion of the court, be ordered. Ex parte Cannon (S.C. 1906) 75 S.C. 214, 55 S.E. 325.

The proceedings are on the law side of the court, and the findings of fact by the trial judge or justice cannot be reviewed on appeal. Ex parte Reed (1883) 19 SC 604. Ex parte Cannon (S.C. 1906) 75 S.C. 214, 55 S.E. 325.

7. Pleadings

A petition for a writ of habeas corpus may properly be dismissed if it contains no allegations which warrant the issuance of the writ. Such petition must contain an adequate statement of facts to make possible preliminarily an intelligent judgment on the possible merits of the petition. Crosby v State (1962) 241 SC 40, 126 SE2d 843. Welch v MacDougall (1965) 246 SC 258, 143 SE2d 455 (1965).

The petition must at least make a prima facie showing entitling the applicant to relief. Crosby v State (1962) 241 SC 40, 126 SE2d 843. Welch v MacDougall (1965) 246 SC 258, 143 SE2d 455.

A petition for habeas corpus is an appropriate petition so long as the petition itself supports the requested relief. Hunter v. State (S.C. 1994) 316 S.C. 105, 447 S.E.2d 203. Habeas Corpus 206.1

A contention of the defendant that he is not guilty of the crime of rape does not raise a matter for consideration by habeas corpus. Ross v. State (S.C. 1967) 250 S.C. 442, 158 S.E.2d 647. Habeas Corpus 462

8. Presumptions and burden of proof

Where a person seeks relief by writ of habeas corpus he has the burden of sustaining the allegations of his petition by a preponderance of the evidence. Ross v. State (S.C. 1967) 250 S.C. 442, 158 S.E.2d 647. Habeas Corpus 714

9. Review

On judicial review of disciplinary sanction imposed for violation of policy prohibiting inmates from providing legal assistance to other inmate, prisoner lacked standing to assert claim that enforcement of policy violated right of access to court of illiterate inmate that prisoner was accused of providing legal assistance to with respect to inmate’s application for postconviction relief, where prisoner did not allege that alleged inadequacy of prison law library or library staff caused him actual injury. Howard v. South Carolina Dept. of Corrections (S.C. 2012) 399 S.C. 618, 733 S.E.2d 211. Prisons 297

**SECTION 17‑17‑20.** Forfeiture of entitlement in certain cases.

 If any person shall have wilfully neglected by the space of two whole terms after his imprisonment to pray a habeas corpus for his enlargement such person, so wilfully neglecting, shall not have any habeas corpus to be granted in vacation time in pursuance of this chapter.

HISTORY: 1962 Code Section 17‑352; 1952 Code Section 17‑352; 1942 Code Section 1049; 1932 Code Section 1049; Cr. P. ‘22 Section 136; Cr. C. ‘12 Section 118; Cr. C. ‘02 Section 91; G. S. 2324; R. S. 91; 1679 (1) 119.

CROSS REFERENCES

Court rules regarding issuance of original writ of habeas corpus by Supreme Court, see Rules of Civil Procedure, Rule 65.

Library References

Habeas Corpus 603.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 281 to 282.

**SECTION 17‑17‑30.** Authority of judges to grant writs of habeas corpus.

 Any of the judges of this State, in vacation time and out of term, upon view of the copy of the warrant of commitment and detainer or otherwise and upon oath made that such copy was denied to be given by the person in whose custody the prisoner is detained, shall, upon request made in writing by such person as is committed as aforesaid or any on his behalf, attested and subscribed by two witnesses who were present at the delivery of the request, award and grant a writ of habeas corpus, under the seal of such court, whereof he shall be one of the judges.

HISTORY: 1962 Code Section 17‑353; 1952 Code Section 17‑353; 1942 Code Section 1050; 1932 Code Section 1050; Cr. P. ‘22 Section 137; Cr. C. ‘12 Section 119; Cr. C. ‘02 Section 92; G. S. 2325; R. S. 92; 1679 (1) 118.

CROSS REFERENCES

Constitutional provision granting power to Justices and judges to issue writs of habeas corpus at chambers, see SC Const, Art V, Section 20.

Court rules regarding issuance of original writ of habeas corpus by Supreme Court, see Rules of Civil Procedure, Rule 65.

Jurisdiction of Supreme Court, see SC Const, Art V, Section 5.

Power of individual Supreme Court judges to grant writ at chambers, see Section 14‑3‑350.

Library References

Habeas Corpus 612.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 243 to 246, 248 to 250, 272.

**SECTION 17‑17‑40.** Authority of any two magistrates to grant writs of habeas corpus.

 Any two magistrates shall grant the writ of habeas corpus as fully, effectually and lawfully as may any judge of the court of common pleas and general sessions or justice of the Supreme Court of this State, except in cases of felony the punishment for which is death or imprisonment for life and except in changing the custody of any child, in which cases magistrates shall have no jurisdiction in applications for habeas corpus.

HISTORY: 1962 Code Section 17‑354; 1952 Code Section 17‑354; 1942 Code Section 1060; 1932 Code Section 1060; Cr. P. ‘22 Section 147; Cr. C. ‘12 Section 129; Cr. C. ‘02 Section 102; G. S. 2335; R. S. 102; 1712 (2) 460; 1839 (11) 23; 1918 (30) 765.

CROSS REFERENCES

Court rules regarding issuance of original writ of habeas corpus by Supreme Court, see Rules of Civil Procedure, Rule 65.

Library References

Habeas Corpus 612.1.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 243, 246, 249 to 250, 272.

NOTES OF DECISIONS

In general 1

1. In general

An appeal from an order made by two magistrates in habeas corpus proceedings must be to the circuit court, and not directly to the Supreme Court. State v. Duncan (S.C. 1884) 22 S.C. 87. Courts 244; Habeas Corpus 814

**SECTION 17‑17‑50.** Persons to whom writ shall be directed.

 Such writ shall be directed to the officer in whose custody the party so committed or detained shall be and shall be returned immediately before the judge issuing it.

HISTORY: 1962 Code Section 17‑355; 1952 Code Section 17‑355; 1942 Code Section 1051; 1932 Code Section 1051; Cr. P. ‘22 Section 138; Cr. C. ‘12 Section 120; Cr. C. ‘02 Section 93; G. S. 2326; R. S. 93; 1679 (1) 118.

CROSS REFERENCES

Court rules regarding issuance of original writ of habeas corpus by Supreme Court, see Rules of Civil Procedure, Rule 65.

Library References

Habeas Corpus 676.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 297, 299, 306 to 307.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Habeas Corpus Section 165 , Introductory Comments.

**SECTION 17‑17‑60.** Service of writ.

 The writ shall be served upon the officer or left at the jail or prison with any of the underofficers, underkeepers or deputies of any such officer or keeper.

HISTORY: 1962 Code Section 17‑356; 1952 Code Section 17‑356; 1942 Code Section 1052; 1932 Code Section 1052; Cr. P. ‘22 Section 139; Cr. C. ‘12 Section 121; Cr. C. ‘02 Section 94; G. S. 2327; R. S. 94; 1679 (1) 117.

CROSS REFERENCES

Court rules regarding issuance of original writ of habeas corpus by Supreme Court, see Rules of Civil Procedure, Rule 65.

Library References

Habeas Corpus 677.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 273 to 274.

**SECTION 17‑17‑70.** Handling of prisoner after service of writ; payment of charges; return of writ.

 Such officer or his underofficer, underkeeper or deputy shall, within three days after the service thereof and upon:

 (1) Payment or tender of charges, not exceeding ten cents per mile, of bringing the prisoner, to be ascertained by the judge or court that awarded the writ and endorsed thereon; and

 (2) Security given by his own bond (a) to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge to which he shall be brought and (b) that he will not make any escape by the way;

 Make return of such writ and bring or cause to be brought the body of the person so committed or restrained unto or before the judge or court from whence the writ shall issue or unto and before such other person before whom the writ is made returnable, according to the command thereof, and shall then certify the true cause of his detainer or imprisonment; provided, however, that:

 (1) If any prisoner be not able to pay such charges they shall be paid by the county wherein he is confined; and

 (2) If such prisoner shall be acquitted of the charge against him or finally discharged on habeas corpus by the judge or court hearing the habeas corpus proceedings the expenses of the proceeding in habeas corpus shall be paid by the county in which the case is situated.

HISTORY: 1962 Code Section 17‑357; 1952 Code Section 17‑357; 1942 Code Section 1053; 1932 Code Section 1053; Cr. P. ‘22 Section 140; Cr. C. ‘12 Section 122; Cr. C. ‘02 Section 95; G. S. 2328; R. S. 95; 1870 (14) 400.

CROSS REFERENCES

Court rules regarding issuance of original writ of habeas corpus by Supreme Court, see Rules of Civil Procedure, Rule 65.

Library References

Habeas Corpus 685, 881, 883.1.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 269, 316, 377 to 380.

**SECTION 17‑17‑80.** Time within which prisoners must be brought before court.

 If the place of imprisonment of the person be beyond the distance of twenty miles from the place where such court is held and not above one hundred miles he shall be brought before the court or the person before whom the writ is returnable within the space of ten days and if beyond the distance of one hundred miles then within the space of twenty days after the delivery of such writ and not longer.

HISTORY: 1962 Code Section 17‑358; 1952 Code Section 17‑358; 1942 Code Section 1054; 1932 Code Section 1054; Cr. P. ‘22 Section 141; Cr. C. ‘12 Section 123; Cr. C. ‘02 Section 96; G. S. 2329; R. S. 96; 1679 (1) 117.

Library References

Habeas Corpus 685.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 269, 316.

**SECTION 17‑17‑90.** Granting of writ during term of court.

 During the term of the circuit court for the county in which any prisoner is detained no person shall be removed from the common jail upon any writ of habeas corpus granted in pursuance of this chapter but, upon any such writ, shall be brought before the circuit judge, in open court, who is thereupon to do what to justice shall appertain.

HISTORY: 1962 Code Section 17‑359; 1952 Code Section 17‑359; 1942 Code Section 1057; 1932 Code Section 1057; Cr. P. ‘22 Section 144; Cr. C. ‘12 Section 126; Cr. C. ‘02 Section 99; G. S. 2332; R. S. 99; 1679 (1) 122.

CROSS REFERENCES

Court rules regarding issuance of original writ of habeas corpus by Supreme Court, see Rules of Civil Procedure, Rule 65.

Library References

Habeas Corpus 685.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 269, 316.

**SECTION 17‑17‑100.** Transfer of matter for hearing to judge of court in county where prisoner was convicted.

 Any judge before whom a petition for a writ of habeas corpus is made by any person confined by the State Board of Corrections in any of its places of confinement who has been tried and convicted by a court of competent jurisdiction, shall upon issuance of the writ of habeas corpus transfer the matter for hearing to any judge of any court of competent jurisdiction in the county where the person was convicted.

HISTORY: 1962 Code Section 17‑359.1; 1966 (54) 2102.

Library References

Habeas Corpus 652.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 265 to 266.

**SECTION 17‑17‑110.** Granting of writ after adjournment.

 After the circuit court adjourns any person detained may have a writ of habeas corpus, according to the direction and intention of this chapter.

HISTORY: 1962 Code Section 17‑360; 1952 Code Section 17‑360; 1942 Code Section 1058; 1932 Code Section 1058; Cr. P. ‘22 Section 145; Cr. C. ‘12 Section 127; Cr. C. ‘02 Section 100; G. S. 2333; R. S. 100; 1679 (1) 122.

CROSS REFERENCES

Court rules regarding issuance of original writ of habeas corpus by Supreme Court, see Rules of Civil Procedure, Rule 65.

Library References

Habeas Corpus 689.

Westlaw Topic No. 197.

**SECTION 17‑17‑120.** Discharge only after notice given to Attorney General, Circuit Solicitor, or attorney acting for State.

 When it appears from the return of the writ or otherwise that the person is imprisoned on a criminal accusation he shall not be discharged until sufficient notice has been given to the Attorney General or circuit solicitor or other attorney acting for the State, that he may appear and object to such discharge, if he thinks fit.

HISTORY: 1962 Code Section 17‑361; 1952 Code Section 17‑361; 1942 Code Section 1056; 1932 Code Section 1056; Cr. P. ‘22 Section 143; Cr. C. ‘12 Section 125; Cr. C. ‘02 Section 98; G. S. 2331; R. S. 98.

CROSS REFERENCES

Court rules regarding issuance of original writ of habeas corpus by Supreme Court, see Rules of Civil Procedure, Rule 65.

Library References

Habeas Corpus 892.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 50, 384 to 387.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney General Section 16, Civil, Administrative and Special Proceedings.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Ex parte Wilson (S.C. 1951) 219 S.C. 139, 64 S.E.2d 400.

**SECTION 17‑17‑130.** Discharge of prisoner after hearing; recognizance in judge’s discretion, appearance in the following term of court.

 If, upon a hearing, the prisoner shall be entitled to his discharge then the judge before whom he is brought shall within two days after the prisoner shall be brought before him discharge the prisoner from his imprisonment, taking his recognizance, with one or more surety or sureties, in any sum according to the judge’s discretion, having regard to the nature of the offense, for his appearance the term following in the court of general sessions for the county in which the offense is alleged to have been committed or in the court of such other county in which the alleged offense is properly cognizable, as the case shall require. And the judge shall then certify the writ, with the return thereof, and the recognizance into the court in which such appearance is to be made. But if no legal cause be shown for the imprisonment or restraint the prisoner shall be discharged therefrom.

HISTORY: 1962 Code Section 17‑362; 1952 Code Section 17‑362; 1942 Code Section 1055; 1932 Code Section 1055; Cr. P. ‘22 Section 142; Cr. C. ‘12 Section 124; Cr. C. ‘02 Section 97; G. S. 2330; R. S. 97; 1679 (1) 118.

CROSS REFERENCES

Right of bail after conviction, see Section 18‑1‑90.

Right of bail before conviction, see SC Const, Art I, Section 15.

Library References

Habeas Corpus 800.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 317 to 318, 350, 368.

NOTES OF DECISIONS

In general 1

1. In general

As to power of judge to let to bail at chambers, see State v Hill (1812) 5 SCL 89. State v Everett (1838) 23 SCL 295. State v Arthur (1838) 26 SCL 456.

As to discretionary power to bail, see State v Hill (1812) 6 SCL 242. State v Gulden (1823) 13 SCL 524.

The judge can only conditionally discharge on bail, not absolutely. State v. Jones (S.C. 1890) 32 S.C. 583, 10 S.E. 577.

Under this chapter the judge can neither let to bail nor discharge a prisoner committed for an offense not bailable. State v. Everett (S.C. 1838).

Such as party convicted of infamous crime. State v. Connor (S.C. 1796).

**SECTION 17‑17‑140.** Right to appeal from decision on writ.

 An appeal from all final decisions rendered on applications for writs of habeas corpus shall be allowed as is provided by law in civil actions.

HISTORY: 1962 Code Section 17‑363; 1952 Code Section 17‑363; 1942 Code Section 1065; 1932 Code Section 1065; Cr. P. ‘22 Section 152; Cr. C. ‘12 Section 134; Cr. C. ‘02 Section 107.

CROSS REFERENCES

Notice of intent to appeal, see Rules of Civil Procedure, Rule 74.

When appeals to the Supreme Court may be had, see Sections 14‑3‑320, 14‑3‑330.

Library References

Habeas Corpus 814.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 350, 398, 400.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. South Carolina Rules of Civil Procedure Section 72.1, Reporter’s Notes.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Douglas v. Hall (S.C. 1956) 229 S.C. 550, 93 S.E.2d 891.

Habeas corpus order made in chambers but not served upon the adverse party may be appealed from more than ten days after date of order. Ex parte Murray (S.C. 1919) 112 S.C. 342, 99 S.E. 798, 5 A.L.R. 1152.

The State has an appealable interest in a habeas corpus order releasing persons sought to be extradited pursuant to the Governor’s warrant. Ex parte Murray (S.C. 1919) 112 S.C. 342, 99 S.E. 798, 5 A.L.R. 1152. Habeas Corpus 815

The sole object of an application for bail under writ of habeas corpus is to release the accused from prison until the day of the trial. Whether bail be granted or improperly denied, the function of the writ is at an end when the day of trial arrives. So, also, the only effect of a reversal on appeal of the order denying bail would be to give the accused bail until the day of trial arrives when it would end. Hence, if the day of trial arrives before the appeal is heard and decided, the necessary result is to end the appeal. Ex parte Jones (S.C. 1909) 82 S.C. 164, 63 S.E. 743.

**SECTION 17‑17‑150.** Person discharged shall not be rearrested or committed for same offense.

 No person who shall be delivered or set at large upon any writ of habeas corpus shall, at any time, be again imprisoned or committed for the same offense by any person whatsoever, other than by the legal order and process of such court wherein he shall be bound by recognizance to appear or other court having jurisdiction of the cause. If any other person shall knowingly, contrary to this chapter, recommit or imprison or knowingly procure or cause to be recommitted or imprisoned for the same offense or pretended offense any person delivered or set at large, as aforesaid, or be knowingly aiding or assisting therein, then he shall forfeit to the prisoner or person grieved the sum of two thousand five hundred dollars, any colorable pretense or variation in the warrant of commitment notwithstanding, to be recovered as provided in Section 17‑17‑180.

HISTORY: 1962 Code Section 17‑364; 1952 Code Section 17‑364; 1942 Code Section 1059; 1932 Code Section 1059; Cr. P. ‘22 Section 146; Cr. C. ‘12 Section 128; Cr. C. ‘02 Section 101; G. S. 2334; R. S. 101; 1679 (1) 119.

Library References

Double Jeopardy 119.

Westlaw Topic No. 135H.

C.J.S. Criminal Law Sections 298 to 299.

NOTES OF DECISIONS

In general 1

1. In general

Applied in State v. Clough (S.C. 1951) 220 S.C. 390, 68 S.E.2d 329.

**SECTION 17‑17‑160.** Officers shall execute writ.

 Every sheriff, deputy sheriff or jailer shall give due obedience to the execution of every writ of habeas corpus made or signed by any person by law empowered to grant the writ and shall do and perform any matter or thing which by the writ he may be required to do. And if he shall wilfully neglect, refuse or omit to obey or perform the writ when legally requested and demanded in such case, for each such neglect, refusal, or omission, he shall forfeit the sum of five hundred dollars, to be recovered by indictment.

HISTORY: 1962 Code Section 17‑365; 1952 Code Section 17‑365; 1942 Code Section 1066‑1; 1932 Code Section 1532; Cr. C. ‘22 Section 479; Cr. C. ‘12 Section 553; Cr. C. ‘02 Section 396; G. S. 680; R. S. 313; 1839 (11) 48.

CROSS REFERENCES

Court rules regarding issuance of original writ of habeas corpus by Supreme Court, see Rules of Civil Procedure, Rule 65.

Library References

Habeas Corpus 804.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 270, 350, 375.

**SECTION 17‑17‑170.** Penalty for officers neglecting their duty.

 Every person whatsoever to whom any power is given, either judicial or ministerial, by this chapter which, by virtue hereof, he is required and commanded to exercise who shall wilfully neglect, refuse or omit to exercise the power when such exercise shall be legally requested and demanded, according to the directions herein, and when the person so requesting and demanding such exercise is legally entitled so to request or demand by the provisions of this chapter, for each such offense shall forfeit the sum of five hundred dollars and shall be thereafter incapable of holding or executing his office.

HISTORY: 1962 Code Section 17‑366; 1952 Code Section 17‑366; 1942 Code Section 1061; 1932 Code Section 1061; Cr. P. ‘22 Section 148; Cr. C. ‘12 Section 130; Cr. C. ‘02 Section 103; G. S. 2336; R. S. 103; 1679 (1) 119; 1712 (2) 400.

Library References

Habeas Corpus 805.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 270, 350.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bribery Section 17, Sentence and Punishment.

**SECTION 17‑17‑180.** Recovery of penalties.

 Such penalties may be recovered by the prisoner or party grieved, his executors and administrators, against such offender, his executors or administrators, by action in any court of competent jurisdiction wherein no protection, privilege, injunction or stay of prosecution shall be admitted or allowed.

HISTORY: 1962 Code Section 17‑367; 1952 Code Section 17‑367; 1942 Code Section 1062; 1932 Code Section 1062; Cr. P. ‘22 Section 149; Cr. C. ‘12 Section 131; Cr. C. ‘02 Section 104; G. S. 2337; R. S. 104; 1679 (1) 119.

Library References

Habeas Corpus 805.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 270, 350.

**SECTION 17‑17‑190.** Suspension of habeas corpus by Governor.

 If, during any insurrection, rebellion or any unlawful obstruction of the laws, as set forth in Section 25‑1‑1850, the Governor in his judgment shall deem the public safety to require it, he may suspend the privilege of the writ of habeas corpus in any case throughout the State or any part thereof.

HISTORY: 1962 Code Section 17‑368; 1952 Code Section 17‑368; 1942 Code Section 1066; 1932 Code Section 1066; Cr. P. ‘22 Section 153; Cr. C. ‘12 Section 337; Cr. C. ‘02 Section 250; G. S. 2584; R. S. 215; 1868 (14) 86.

CROSS REFERENCES

Constitutional provision for suspension of habeas corpus, see SC Const, Art I, Section 18.

Jurisdiction of Supreme Court in granting writs of habeas corpus, see SC Const, Art V, Section 5.

Library References

Habeas Corpus 911 to 913.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Sections 4 to 5.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 24, Powers of the Governor.

**SECTION 17‑17‑200.** Effect of suspension of writ.

 Whenever the privilege of the writ of habeas corpus shall be suspended, as aforesaid, no military or other officer shall be compelled in answer to any writ of habeas corpus to return the body of any person detained by him by authority of the Governor. But upon certificate under oath of the officer having charge of anyone so detained that such person is detained by him as a prisoner under the authority of the Governor further proceedings under the writ of habeas corpus shall be suspended by the judge or court having issued the writ so long as such suspension by the Governor shall remain in force and the cause for such suspension continue.

HISTORY: 1962 Code Section 17‑369; 1952 Code Section 17‑369; 1942 Code Section 1066; 1932 Code Section 1066; Cr. P. ‘22 Section 153; Cr. C. ‘12 Section 337; Cr. C. ‘02 Section 250; G. S. 2584; R. S. 215; 1868 (14) 86.

CROSS REFERENCES

Constitutional provision for suspension of habeas corpus, see SC Const, Art I, Section 18.

Library References

Habeas Corpus 913.

Westlaw Topic No. 197.

C.J.S. Habeas Corpus Section 5.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 24, Powers of the Governor.