

**MOORE ET AL. v. DEMPSEY, KEEPER OF THE ARKANSAS STATE
PENITENTIARY.**

No. 199.

SUPREME COURT OF THE UNITED STATES

261 U.S. 86; 43 S. Ct. 265; 67 L. Ed. 543; 1923 U.S. LEXIS 2529

**January 9, 1923, Argued
February 19, 1923, Decided**

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

APPEAL from an order of the District Court dismissing a petition for habeas corpus upon demurrer.

OPINION

MR. JUSTICE HOLMES delivered the opinion of the Court.

. . . The appellants are five negroes who were convicted of murder in the first degree and sentenced to death by the Court of the State of Arkansas. The ground of the petition for the writ is that the proceedings in the State Court, although a trial in form, were only a form, and that the appellants were hurried to conviction under the pressure of a mob without any regard for their rights and without according to them due process of law.

The case stated by the petition is as follows, and it will be understood that while we put it in narrative form, we are not affirming the facts to be as stated but only what we must take them to be, as they are admitted by the demurrer: On the night of September 30, 1919, a number of colored people assembled in their church were attacked and fired upon by a body of white men, and in the disturbance that followed a white man was killed. The report of the killing caused great excitement and was followed by the hunting down and shooting of many negroes and also by the killing on October 1 of one Clinton Lee, a white man, for whose murder the petitioners were indicted. They seem to have been arrested with many others on the same day. The petitioners say that Lee must have been killed by other whites, but that we leave on one side as what we have to deal with is not the petitioners' innocence [*88] or guilt but solely the question whether their constitutional rights have been preserved. They say that their meeting was to employ counsel for protection against extortions practiced upon them by the landowners and that the landowners tried to prevent their effort, but that again we pass by as not directly bearing upon the trial. It should be mentioned however that O. S. Bratton, a son of the

counsel who is said to have been contemplated and who took part in the argument here, arriving for consultation on October 1, is said to have barely escaped being mobbed; that he was arrested and confined during the month on a charge of murder and on October 31 was indicted for barratry, but later in the day was told that he would be discharged but that he must leave secretly by a closed automobile to take the train at West Helena, four miles away, to avoid being mobbed. It is alleged that the judge of the Court in which the petitioners were tried facilitated the departure and went with Bratton to see him safely off.

A Committee of Seven was appointed by the Governor in regard to what the committee called the "insurrection" in the county. The newspapers daily published inflammatory articles. On the 7th a statement by one of the committee was made public to the effect that the present trouble was "a deliberately planned insurrection of the negroes against the whites, directed by an organization known as the 'Progressive Farmers' and Household Union of America' established for the purpose of banding negroes together for the killing of white people." According to the statement the organization was started by a swindler to get money from the blacks.

Shortly after the arrest of the petitioners a mob marched to the jail for the purpose of lynching them but were prevented by the presence of United States troops and the promise of some of the Committee of Seven and other leading officials that if the mob would refrain, as the petition puts it, they would execute those found guilty in the form of law. The Committee's own statement was that the reason that the people refrained from mob violence was "that this Committee gave our citizens their solemn promise that the law would be carried out." According to affidavits of two white men and the colored witnesses on whose testimony the petitioners were convicted, produced by the petitioners since the last decision of the Supreme Court hereafter mentioned, the Committee made good their promise by calling colored witnesses and having them whipped and tortured until they would say what was wanted, among

them being the two relied on to prove the petitioners' guilt. However this may be, a grand jury of white men was organized on October 27 with one of the Committee of Seven and, it is alleged, with many of a posse organized to fight the blacks, upon it, and on the morning of the 29th the indictment was returned. On November 3 the petitioners were brought into Court, informed that a certain lawyer was appointed their counsel and were placed on trial before a white jury -- blacks being systematically excluded from both grand and petit juries. The Court and neighborhood were thronged with an adverse crowd that threatened the most dangerous consequences to anyone interfering with the desired result. The counsel did not venture to demand delay or a change of venue, to challenge a jurymen or to ask for separate trials. He had had no preliminary consultation with the accused, called no witnesses for the defence although they could have been produced, and did not put the defendants on the stand. The trial lasted about three-quarters of an hour and in less than five minutes the jury brought in a verdict of guilty of murder in the first degree. According to the allegations and affidavits there never was a chance for the petitioners to be acquitted; no jurymen could have voted for an acquittal and continued to live in Phillips County and if [*90] any prisoner by any chance had been acquitted by a jury he could not have escaped the mob.

The averments as to the prejudice by which the trial was environed have some corroboration in appeals to the Governor, about a year later, earnestly urging him not to interfere with the execution of the petitioners. One came from five members of the Committee of Seven, and stated in addition to what has been quoted heretofore that "all our citizens are of the opinion that the law should take its course." Another from a part of the American Legion protests against a contemplated commutation of the sentence of four of the petitioners and repeats that a "solemn promise was given by the leading citizens of the community that if the guilty parties were not lynched, and let the law take its course, that justice would be done and the majesty of the law upheld." A meeting of the Helena Rotary Club attended by members representing, as it said, seventy-five of the leading industrial and commercial enterprises of Helena, passed a resolution approving and supporting the action of the American Legion post. The Lions Club of Helena at a meeting attended by members said to represent sixty of the leading industrial and commercial enterprises of the city passed a resolution to the same effect. In May of the same year, a trial of six other negroes was coming on and it was represented to the Governor by the white citizens and officials of Phillips County that in all probability those negroes would be lynched. It is alleged that in

order to appease the mob spirit and in a measure secure the safety of the six the Governor fixed the date for the execution of the petitioners at June 10, 1921, but that the execution was stayed by proceedings in Court; we presume the proceedings before the Chancellor to which we shall advert

In *Frank v. Mangum*, 237 U.S. 309, 335, it was recognized of course that if in fact a trial is dominated by a [*91] mob so that there is an actual interference with the course of justice, there is a departure from due process of law; and that "if the State, supplying no corrective process, carries into execution a judgment of death or imprisonment based upon a verdict thus produced by mob domination, the State deprives the accused of his life or liberty without due process of law." We assume in accordance with that case that the corrective process supplied by the State may be so adequate that interference by Habeas corpus ought not to be allowed. It certainly is true that mere mistakes of law in the course of a trial are not to be corrected in that way. But if the case is that the whole proceeding is a mask -- that counsel, jury and judge were swept to the fatal end by an irresistible wave of public passion, and that the State Courts failed to correct the wrong, neither perfection in the machinery for correction nor the possibility that the trial court and counsel saw no other way of avoiding an immediate outbreak of the mob can prevent this Court from securing to the petitioners their constitutional rights.

In this case a motion for a new trial on the ground alleged in this petition was overruled and upon exceptions and appeal to the Supreme Court the judgment was affirmed. The Supreme Court said that the complaint of discrimination against petitioners by the exclusion of colored men from the jury came [**267] too late and by way of answer to the objection that no fair trial could be had in the circumstances, stated that it could not say "that this must necessarily have been the case"; that eminent counsel was appointed [***546] to defend the petitioners, that the trial was had according to law, the jury correctly charged, and the testimony legally sufficient. On June 8, 1921, two days before the date fixed for their execution, a petition for habeas corpus was presented to the Chancellor and he issued the writ and an injunction against the execution of the petitioners; but the Supreme Court of the State [*92] held that the Chancellor had no jurisdiction under the state law whatever might be the law of the United States. The present petition perhaps was suggested by the language of the Court: "What the result would be of an application to a Federal Court we need not inquire." It was presented to the District Court on September 21. We shall not say

more concerning the corrective process afforded to the petitioners than that it does not seem to us sufficient to allow a Judge of the United States to escape the duty of examining the facts for himself when if true as alleged they make the trial absolutely void. We have confined the statement to facts admitted by the demurrer. We will not say that they cannot be met, but it appears to us unavoidable that the District Judge should find whether the facts alleged are true and whether they can be explained so far as to leave the state proceedings undisturbed.

Order reversed. The case to stand for hearing before the District Court.

DISSENT

Mr. Justice McREYNOLDS, dissenting.

We are asked to overrule the judgment of the District Court discharging a writ of habeas corpus by means of which five negroes sought to escape electrocution for the murder of Clinton Lee. § 753, Rev. Stats. ¹ They were convicted and sentenced in the Circuit Court of Phillips County, Arkansas, two years before the writ issued. The petition for the writ was supported by affidavits of these five ignorant men whose lives were at stake, the ex parte affidavits of three other negroes who had pleaded guilty [*93] and were then confined in the penitentiary under sentences for the same murder, and the affidavits of two white men -- low villains according to their own admissions. It should be remembered that to narrate the allegations of the petition is but to repeat statements from these sources. Considering all the circumstances -- the course of the cause in the state courts and upon application here for certiorari, etc., -- the District Court held the alleged facts insufficient prima facie to show nullity of the original judgment.

[footnote omitted]

The matter is one of gravity. If every man convicted of crime in a state court may thereafter resort

to the federal court and by swearing, as advised, that certain allegations of fact tending to impeach his trial are "true to the best of his knowledge and belief," thereby obtain as of right further review, another way has been added to a list already unfortunately long to prevent prompt punishment. The delays incident to enforcement of our criminal laws have become a national scandal and give serious alarm to those who observe. Wrongly to decide the present cause probably will produce very unfortunate consequences.

In *Frank v. Mangum*, 237 U.S. 309, 325, 326, 327, 329, 335, after great consideration a majority of this Court approved the doctrine which should be applied here. The doctrine is right and wholesome. I can agree now to put it aside and substitute the views expressed by the minority of the Court in that cause.

* * * *

With all those things before him, I am unable to say that the District Judge, acquainted with local conditions, erred when he held the petition for the writ of Habeas corpus insufficient. His duty was to consider the whole case and decide whether there appeared to be substantial reason for further proceedings.

[*102] Under the disclosed circumstances I cannot agree that the solemn adjudications by courts of a great State, which this Court has refused to review, can be successfully impeached by the mere ex parte affidavits made upon information and belief of ignorant convicts joined by two white men -- confessedly atrocious criminals. The fact that petitioners are poor and ignorant and black naturally arouses sympathy; but that does not release us from enforcing principles which are essential to the orderly operation of our federal system.

I am authorized to say that MR. JUSTICE SUTHERLAND concurs in this dissent.