BENCH MEMO

No. 79-935

Allen et al. v. McCurry

Cert to CA8 (Lay, Heaney, McMillian)

Vote:

Grant: WJB, BRW, HAB, LFP, WHR

DENY: TM, JPS

JOIN 3: Chief

HOLD: PS

ISSUE

Whether collateral estoppel precludes a litigant pursuing a section 1983 action in federal court from relitigating fourth amendment search and seizure questions that were decided against him in a prior state court criminal proceeding.

FACTS

Following his conviction charges of illegal possession of heroin and assault with intent to kill, and while his state appeal was pending, rspdt filed a pro se section 1983 action alleging violation of his constitutional rights in connection with his arrest and naming as defendants two individual police officers, unknown police officers, and the City of St. Louis Police Dept. Apparently, the cops had gone to rspdt's house to buy some heroin and arrest him. Petr shot two of them but eventually surrendered. His house was searched and some drugs and guns were found. Petr filed a suppression motion but the trial court allowed the evidence that was in plain view while suppressing other evidence the cops found.

Rspdt's complaint was construed as alleging that (1) the cops conspired to conduct an illegal search of his home, (2)

his home was illegally searched, (3) he was assaulted by the cops after being arrested. The DC granted summary judgment for petrs on the ground that collateral estoppel precluded rspdt from relitigating the issue of the legality of the search.

The CA8 reversed. First, it pointed out that the DC had overlooked rspdt's assault claim which had not been at issue in the state ct proceedings. Second, the CA noted that after Stone v. Powell, state prisoners cannot raise search and seizure claims in habeas actions and reasoned that the special role of the federal courts in protecting civil rights envisaged by 1983 required full consideration of search and seizure claims raised in a 1983 action without regard to a prior state court determination. However, the CA directed the DC to temporarily abstain until state appellate review of rspdt's case was completed.

ARGUMENTS

Petrs do not challenge the CA decision insofar as it directed the DC to consider rspdt's assault claim. Petrs contend, however, that the CA erred in refusing to apply well settled principles of collateral estoppel in the instant case. First, they argue that application of these principles is neccessary to staunch the torrent of civil rights litigation. Second, petrs note that it is settled that 1983 liability standards are tort liability standards and they argue that collateral estoppel principles which are embedded in Anglo-American jurisprudence should be regarded as giving substance to federal law under section 1983. Third, petrs contend that other federal courts have recognized the propriety of applying collateral estoppel principles in 1983 actions,

noting that this is the first to explicitly refuse to apply collateral estoppel. Fourth, petrs maintain that the legislative history of section 1983 indicates that the CA's concept of the special role of federal courts in protecting civil rights is patently erroneous. In their view, the legislative history confirms that Congress merely intended to allow a supplemental remedy in those instances in which the state remedy was not adequate. Fifth, petrs contend that the Federal Res Judicata Act also supports the conclusion that collateral estoppel should apply in this case since there is no indication that Congress intended to exempt 1983 actions from the reach of the Act. Finally, petrs contend that the application of collateral estoppel cannot be conditioned on the availability of habeas relief, arguing that the sole concern of federal courts in cases such as this should be with whether the plaintiff was accorded a full and fair opportunity to litigate his claim.

Rspdt for his part maintains that applying collateral estoppel to cases such as this would subvert Congress'intent in enacting section 1983 to make federal courts the guarantors of federal rights against state power. He argues that the legislative history confirms that Congress was concerned about the inability of state courts to protect individual rights and intended to place responsibility for protection of such rights in the federal courts. Rspdt further contends that the CA decision is consistent with Stone v. Powell, insofar as the main concern in the latter case was to balance the harmful effects of applying the exclusionary rule against its supposed deterrent effect. He argues that 1983 actions will serve as a

direct deterrent to improper police conduct and will not have the effect of freeing the guilty that concerned the Stone Court. Rspdt also disputes petrs' contentions that general principles of tort law or the Federal Res Judicata Act mandate reversal of the CA decision, maintaining that these other principles conflict with and must yield to the policies embodied in section 1983.

DISCUSSION

This is obviously a rather important case and the CA decision should be affirmed. While petrs are correct in noting that most federal courts have applied collateral estoppel in similar cases, most of these cases were decided before Stone and a number of the courts pointed out that the litigant could challenge the preclusive effect of the state court decision by bringing a habeas action Fortunately, Stone v. Powell does not compel reversal of the CA's decision since that case went off on a tangent about balancing the costs and benefits of applying the exclusionary rule in the context of a habeas petition. Indeed, it would seem that 1983 actions must come out rather well on Stone's balancing test. The social costs aren't high since no guilty people are released whereas the deterrent effects of such suits must be quite high.

Another reason why the CA decision should be affirmed is that as you noted in your concurring opinion in Mincey v. Arizona, (1977), since Stone, state courts have been left relatively unchecked in their interpretation of fourth amendment decisions. Allowing independent examination of search and seizure issues in 1983 actions is one way to ensure that the lower federal courts also play a role in keeping state

courts honest on fourth amendment law. However, this latter argument is unlikely to persuade a number of the Justices.

Ultimately, the case comes down to the question whether the interest in vindicating federal civil rights outweighs the policy considerations that support collateral estoppel. Since the Court has been relatively unreceptive to the idea that state courts are not as diligent as federal courts in protecting federal constitutional rights, the argument has to be phrased in terms of the special role that Congress intended for the federal courts when it enacted section 1983. The legislative history provides support for the view that Congress wanted to be the ultimate arbiters of these issues and language in the Court's opinion in Mithcum v. Foster, (1972) supports this view. Whether a majority of this Court will be persuaded is, of course, an entirely separate matter.

But even if the Court is not willing to go along with the general idea of the CA decision, it is still possible to affirm the CA decision on narrower grounds. As I have indicated, the state court did in fact partially grant rspdt's suppression motion (it only allowed the state to introduce the evidence that the police discovered in plain view). Thus it is possible to uphold the CA decision on the ground the that the state court decision was not completely unfavorable to rspdt. Of course, petrs argue that rspdt's complaint only sought damages for injury suffered as a result of an illegal entry into his house and did not complain about the scope of the search. However, rspdt brought his initial complaint as a pro se litigant and it doesn't take much "liberal construction" to reach the conclusion that he was also complaining about the

cope of the search. In any event that portion of the CA decision remanding the case to the DC for examination of rspdt's assault claim is not challenged by petrs so the Court should be willing to affirm at least that portion of the decision.

AFFIRM ao OCTOBER 6 SITTING