Colorado Revised Statutes: Title 16: Criminal Proceedings: 13-45-101. Petition for Writ - Criminal Cases.

TITLE 13. COURTS AND COURT PROCEDURE. HABEAS CORPUS.
ARTICLE 45. HABEAS CORPUS - GENERAL PROVISIONS.
http://www.lexisnexis.com/hottopics/Colorado

(1) If any person is committed or detained for any criminal or supposed criminal matter, it is lawful for him to apply to the supreme or district courts for a writ of habeas corpus,

which application shall be in writing and signed by the prisoner or some person on his behalf setting forth the facts concerning his imprisonment and in whose custody he is detained, and shall be accompanied by a copy of the warrant of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given. The court to which the application is made shall forthwith award the writ of habeas corpus, unless it appears from the petition itself, or from the documents annexed, that the party can neither be discharged nor admitted to bail nor in any other manner relieved. Said writ, if issued by the court, shall be under the seal of the court, and directed to the person in whose custody the prisoner is detained, and made returnable forthwith.

(2) To the intent that no officer, sheriff, jailer, keeper, or other person to whom such writ is directed may pretend ignorance thereof, every writ shall be endorsed with the words "by the habeas corpus act". When the writ is served by any person upon the sheriff, jailer, or keeper, or other person to whom the same is directed, or brought to him, or left with any of his underofficers or deputies at the jail or place where the prisoner is detained, he or some of his underofficers or deputies, upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the court awarding the said writ and endorsed thereon not exceeding fifteen cents per mile and upon sufficient security given to pay the charges of carrying him back if he is remanded, shall make return of the writ and bring, or cause to be brought, the body of the prisoner before the court which granted the writ and certify the true cause of his imprisonment within three days thereafter, unless the commitment of such person is in a place beyond the distance of twenty miles from the place where the writ is returnable; if it is beyond the distance of twenty miles and not above one hundred miles, the writ shall be returned within ten days and, if beyond the distance of one hundred miles, within twenty days after the delivery of the writ, and not longer.

Case Notes, Annotation:

I. GENERAL CONSIDERATION.

A. In General.

Law reviews. For note, "Jurisdiction of Custody Matters in Colorado", see 28 Rocky Mt. L. Rev. 393 (1956). For note, "Habeas Corpus in Colorado for the Convicted Criminal", see 30 Rocky Mt. L. Rev. 145 (1958). For note, "Habeas Corpus Procedure", see 41 Den. L. Ctr. J. 111 (1964). For note, "Federal Habeas Corpus Confronts the Colorado Courts: Catalyst or Cataclysm?", see 39 U. Colo. L. Rev. 83 (1966). For article, "Habeas Corpus", which discusses Tenth Circuit decisions dealing with habeas corpus, see 62 Den. U. L. Rev. 241 (1985). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses cases relating to habeas corpus, see 15 Colo. Law. 1618 (1986). For article, "Criminal Law", which discusses Tenth Circuit decisions dealing with habeas corpus, see 64 Den. U. L. Rev. 225 (1987). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with habeas corpus, see 65 Den. U. L. Rev. 553 (1988).

Habeas corpus has been designated the greatest of all writs, and the precious safeguard of personal liberty, concerning which courts are admonished that there is no higher duty than to maintain it unimpaired. Its ascendancy among the writs should be ever sustained. Geer v. Alaniz, 138 Colo. 177, 331 P.2d 260 (1958).

A complaint in the nature of mandamus may be treated as a habeas corpus proceeding. A complaint labeled for relief in the nature of mandamus, filed as an original proceeding in the supreme court seeking release of persons allegedly illegally confined, is essentially a proceeding in habeas corpus rather than mandamus. Riley v. City County of Denver, 137 Colo. 312, 324 P.2d 790 (1958).

The purpose of proceedings in habeas corpus is to determine whether or not the person instituting them is illegally restrained of his liberty. Ex parte Casper, 26 Colo. App. 344, 144 P. 1137 (1914); Riley v. City County of Denver, 137 Colo. 312, 324 P.2d 790 (1958); Hithe v. Nelson, 172 Colo. 179, 471 P.2d 596 (1970); Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973); Collins v. Gunter, 834 P.2d 1283 (Colo. 1992).

The essential purpose to be served with a writ of habeas corpus is to resolve the issue of whether a person is unlawfully detained. Ryan v. Cronin, 191 Colo. 487, 553 P.2d 754 (1976); Mulkey v. Sullivan, 753 P.2d 1226 (Colo. 1988); Johnson v. Gunter, 852 P.2d 1263 (Colo. 1993).

Therefore, because the issues involved in habeas corpus proceedings are very narrow, Crim. P. 54(b)(2) provides that the rules of criminal procedure are not applicable to habeas corpus proceedings, and a court may only authorize discovery under said rules if an appellant clearly shows the information sought will be relevant to the very narrow issues of the habeas corpus hearing. Temen v. Barry, 695 P.2d 745 (Colo. 1984).

Where imprisonment is without warrant or authority, the prisoner is entitled to discharge. Harper v. Montez, 149 Colo. 569, 370 P.2d 154 (1962).

It is incumbent upon a defendant to exhaust his legal remedies before asking the indulgence of the court in the issuance of a writ of habeas corpus. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963); Garrett v. Knight, 173 Colo. 419, 480 P.2d 569 (1971).

A writ of habeas corpus cannot be substituted for a writ of error. Where the trial judge and defendant's counsel misconceived the law and permitted defendant to be subjected to a penitentiary sentence when the court was limited in its judgment to imposing a sentence for a term in the county jail, the judgment of the trial court could and should have been corrected by a writ of error issued out of the supreme court. A habeas corpus writ is an extraordinary writ which may be procured, not as a matter of right, but in the discretion of the court, when the defendant has exhausted his legal remedies. Hart v. Best, 119 Colo. 569, 205 P.2d 787 (1949); People ex rel. Metzger v. District Court, 121 Colo. 141, 215 P.2d 327 (1949); Farrell v. District Court, 135 Colo. 329, 311 P.2d 410 (1957); Zimmerman v. Angele, 137 Colo. 129, 321 P.2d 1105 (1958); Lewis v. Tinsley, 138 Colo. 117, 330 P.2d 532 (1958); Mendez v. Tinsley, 139 Colo. 127, 336 P.2d 706 (1959); Gallegos v. Tinsley, 139 Colo. 157, 337 P.2d 386 (1959); Lowe v. People, 139 Colo. 578, 342 P.2d 631 (1959); McKenna v. Tinsley, 141 Colo. 63, 346 P.2d 584 (1959), cert. denied, 362 U.S. 981, 80 S. Ct. 1066, 4 L. Ed. 2d 1015 (1960); Medberry v. Patterson, 142 Colo. 180, 350 P.2d 571 (1960); Moore v. Tinsley, 142 Colo. 516, 351 P.2d 456 (1960); Valentine v. Tinsley, 143 Colo. 19, 351 P.2d 825 (1960); Bates v. Tinsley, 143 Colo. 390, 353 P.2d 76 (1960); Nickle v. Reeder, 144 Colo. 593, 357 P.2d 921 (1960); Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963); Specht v. Tinsley, 153 Colo. 235, 385 P.2d 423 (1963); Smith v. Tinsley, 223 F. Supp. 68 (D. Colo. 1963); Saxton v. Patterson, 370 F.2d 112 (10th Cir. 1966); Martinez v. Patterson, 382 F.2d 1002 (10th Cir. 1967); McGill v. Leach, 180 Colo. 331, 505 P.2d 374 (1973).

The writ of habeas corpus may not be used as a substitute for an appeal and a hearing on a writ of habeas corpus may not be used as a basis for reviewing issues resolved by another court. Ryan v. Cronin, 191 Colo. 487, 553 P.2d 754 (1976).

Erroneous judgments are not subject to attack by use of the writ of habeas corpus. It is to be used only where the judgment is void. Ryan v. Cronin, 191 Colo. 487, 553 P.2d 754 (1976); Mulkey v. Sullivan, 753 P.2d 1226 (Colo. 1988).

It may not be used to consider sufficiency of evidence. Sufficiency of evidence may not be raised in a habeas corpus proceeding for it is not a substitute for a writ of error. Johnson v. Tinsley, 155 Colo. 346, 394 P.2d 842 (1964).

Prisoner may not attack validity of foreign detainer through habeas corpus petition. It is improper for a prisoner serving a sentence in Colorado to attack the validity of a foreign detainer through a habeas corpus petition. The proper procedure was to obtain disposition of the charges in the state where they were pending. Russell v. Cooper, 724 P.2d 1302 (Colo. 1986); Butler v. Zavaras, 924 P.2d 1060 (Colo. 1996).

A writ of habeas corpus does not run against the people of the state of Colorado. Oates v. People, 136 Colo. 208, 315 P.2d 196 (1957); Olson v. People, 138 Colo. 310, 332 P.2d 486 (1958); Lowe v. People, 139 Colo. 578, 342 P.2d 631 (1959); Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963); Petition of

Gallegos v. Schooley, 155 Colo. 215, 393 P.2d 573 (1964); People v. Calyer, 736 P.2d 1204 (Colo. 1987).

The only parties before a trial court in a habeas corpus proceeding are the petitioner and the person having him in custody, and the only question properly before the trial court is the authority of the respondent to restrain petitioner of his liberty. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963); Cardiel v. Brittian, 833 P.2d 748 (Colo. 1992); Johnson v. Gunter, 852 P.2d 1263 (Colo. 1993).

The persons to whom the writ was directed must make return to the writ. The return which can only be filed by the individuals to whom the writ is directed is a return to the writ and not a return to the petition. Petition of Gallegos v. Schooley, 155 Colo. 215, 393 P.2d 573 (1964); Ede v. Bray, 178 Colo. 99, 495 P.2d 1139 (1972).

The failure to make a formal return neither invalidates a hearing on the merits nor does it operate to discharge the prisoner. Ferrell v. Vogt, 161 Colo. 549, 423 P.2d 844 (1967); Marshall v. Geer, 140 Colo. 305, 344 P.2d 440 (1959); Ede v. Bray, 178 Colo. 99, 495 P.2d 1139 (1972).

One may seek a writ of habeas corpus without running any risk whatever other than having the petition denied or being charged with costs. One may seek a writ of habeas corpus without running any risk whatsoever, other than the risk of having his petition denied and the possibility of being chargeable with the costs of the proceedings. He cannot in such proceedings, whereby he seeks release from illegal restraint, be legally incarcerated on other grounds. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Poor person may seek habeas corpus without payment of costs. The legal device existing in the state of Colorado which provides this equal protection in the postconviction civil remedy of habeas corpus is contained in and governed by § 13-16-103, which allows a poor person to proceed without the payment of costs in a civil action on his making a showing of poverty. Williams v. District Court, 160 Colo. 348, 417 P.2d 496 (1966).

Either while seeking the writ or after its dismissal. The supreme court sees no difference of substance save subtlety between the "invidious discrimination" worked by a fee imposed upon an indigent before he is allowed to petition, which he cannot pay, and a fee saddled upon him after dismissal, which he also cannot pay. Both practices are effective deterrents. To interpose any financial consideration between an indigent prisoner of the state and his exercise of a state right to sue for his liberty is to deny that prisoner the equal protection of the laws. Williams v. District Court, 160 Colo. 348, 417 P.2d 496 (1966).

Financial hurdles must not be permitted to condition its exercise. There is no higher duty than to maintain the federal writ of habeas corpus unimpaired and unsuspended save only in the cases specified in the federal constitution. When an equivalent right is granted by a state, financial hurdles must not be permitted to condition its exercise. Williams v. District Court, 160 Colo. 348, 417 P.2d 496 (1966).

The only issue to be resolved at a habeas corpus proceeding is whether the custodian has authority to deprive the petitioner of liberty. Johnson v. Gunter, 852 P.2d 1263 (Colo. 1993).

The "return" referred to in subsection (2) is the return of the writ, not the return of the petition for the writ. Subsection (1) requires the court to issue the writ unless the petition or supporting documents indicate that no relief is available. Thus, where the court did not issue the writ, the petitioner had no right to a return of the writ. People v. Calyer, 736 P.2d 1204 (Colo. 1987); Wiedemer v. People, 784 P.2d 739 (Colo. 1989).

Writ issued did not comply with requirements of this section. Where writ did not refer to the Habeas Corpus Act, did not require certification of the cause of imprisonment, and did not give notice of nature of proceeding, the order based on the writ purporting to release the prisoner was invalid. People v. Calyer, 736 P.2d 1204 (Colo. 1987).

Writ served to improper respondent. Superintendent of correctional facility was not proper respondent for purposes of the act where superintendent had no responsibility for supervising petitioner's conduct at another facility, even if superintendent may have been deemed agent of department of corrections for purposes of service of process. People v. Calyer, 736 P.2d 1204 (Colo. 1987).

Insufficient notice to state authorities. Notice to district attorney was insufficient notice to all involved in state administrative authority for purposes of determining whether proper notice had been given of petitioner's habeas corpus proceeding. People v. Calyer, 736 P.2d 1204 (Colo. 1987).

Service must be made upon person who has custody of a petitioner in habeas corpus action and therefore the director of the department of corrections or the attorney general must be personally served. Zaborski v. Colo. Dept. of Corr., 812 P.2d 236 (Colo. 1991).

Crim. P. 35(c) governing postconviction remedies did not provide basis for granting habeas corpus relief where petition was not filed under postconviction rule, even though petition was assigned case number of petitioner's original criminal action. People v. Calyer, 736 P.2d 1204 (Colo. 1987).

Allegation that the trial court lacked subject matter jurisdiction to adjudicate defendant as an habitual criminal was properly raised in a C.R.C.P. 35(c) motion for postconviction relief rather than a petition for habeas corpus where original information did not charge defendant as an habitual criminal. Johnson v. Gunter, 852 P.2d 1263 (Colo. 1993).

An improperly filed pro se habeas corpus petition should be treated as a Crim. P. 35(c) motion in order to provide review on the merits of the claims raised by a petitioner. Chatfield v. Colo. Court of Appeals, 775 P.2d 1168 (Colo. 1989).

Rather than dismissing an improper habeas corpus petition, the court should convert such petition into a motion under Crim. P. 35(c) where the petitioner is acting pro se, the petitioner raises issues in the habeas corpus petition which should have been raised in a Crim. P. 35(c) motion, and the petitioner's claims are not barred by the statute of limitations. Graham v. Gunter, 855 P.2d 1384 (Colo. 1993).

Pro se habeas corpus petition was improperly filed in case where an invalid judgment of conviction and sentence were rendered since relief was available under Crim. P. 35 and Crim. P. 36 and the district court should have treated petition as motion under section (c)(2) of Crim. P. 35. Kailey v. Colo. Dept. of Corr., 807 P.2d 563 (Colo. 1991); Johnson v. Gunter, 852 P.2d 1263 (Colo. 1993).

A petition for habeas corpus relief which fails to establish prima facie that the petitioner is not validly confined and is thus entitled to immediate release or that the petitioner has suffered a serious infringement of a fundamental constitutional right resulting in a significant loss of liberty is insufficient and should be dismissed without a hearing. Jones v. Zavaras, 926 P.2d 579 (Colo. 1996).

Defendant's challenges to procedures by which he was sentenced rather than the legality of his confinement may be raised by means of a Crim. P. 35(c) motion but not by means of a habeas corpus petition. Jones v. Zavaras, 926 P.2d 579 (Colo. 1996).

Remedy of habeas corpus was available to person who was detained in Colorado pursuant to request from Nevada parole authorities and who challenged the validity of proceedings under the Parole Supervision Act. People v. Velarde, 739 P.2d 845 (Colo. 1987).

Trial court's error of failing to convert habeas corpus petition into a motion for postconviction relief was cured by defendant's filing of postconviction motion in sentencing court. Johnson v. Gunter, 852 P.2d 1263 (Colo. 1993).

Remand required for hearing on the propriety of defendant's continued confinement as an habitual criminal after second degree assault conviction used to support habitual criminal adjudication was reversed on grounds that the trial court failed to determine defendant's competence to stand trial. Johnson v. Gunter, 852 P.2d 1263 (Colo. 1993).

The remedy of habeas corpus cannot be pursued to redress an unlawful restraint where the petitioner is not in the custody of the respondent. Van Riper v. Sheriff of Jefferson County, 868 P.2d 395 (Colo. 1994).

The relief requested in a habeas corpus proceeding must have a practical effect on the restraint of the prisoner at the time of the habeas corpus hearing. Habeas corpus cannot be granted based on a complaint of former punitive segregation. Brant v. Fielder, 883 P.2d 17 (Colo. 1994).

Where petitioner was a prisoner of the state of Wisconsin and was imprisoned in the Colorado prison system under the Interstate Corrections Compact, petitioner was being detained for a criminal matter and the district court properly applied the provisions of this section. Brant v. Fielder, 883 P.2d 17 (Colo. 1994).

Habeas corpus not appropriate to contest DOC reclassification due to the existence of a detainer because such reclassification does not rise to the level of a constitutional violation. Reed v. People, 745 P.2d 235 (Colo. 1987); Butler v. Zavaras, 924 P.2d 1060 (Colo. 1996).

B. Civil Proceeding.

Habeas corpus is a civil proceeding. Geer v. Alaniz, 137 Colo. 432, 326 P.2d 71 (1958); Wright v. Tinsley, 148 Colo. 258, 365 P.2d 691 (1961); Buhler v. People, 151 Colo. 345, 377 P.2d 748 (1963); Hithe v. Nelson, 172 Colo. 179, 471 P.2d 596 (1970); Mote v. Koch, 173 Colo. 82, 476 P.2d 255 (1970).

Habeas corpus is a civil proceeding independent of the criminal charge. Mulkey v. Sullivan, 753 P.2d 1226 (Colo. 1988).

Habeas corpus is independent of the criminal charge. An application for a writ of habeas corpus is a civil action, independent of the criminal charge, and is no part of an inquiry based on an information. Oates v. People, 136 Colo. 208, 315 P.2d 196 (1957); Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963); Luker v. Koch, 176 Colo. 75, 489 P.2d 191 (1971).

Public providing of counsel is not authorized. Proceedings in habeas corpus are civil actions. There is no constitutional or statutory provision which permits the appointment of counsel for plaintiffs in civil actions. Therefore the appointment of counsel and the payment of fees therefor out of public funds is not authorized and is not and cannot be sanctioned. McGrath v. Tinsley, 138 Colo. 18, 328 P.2d 579 (1958).

Judgment is reviewable by writ of error. Actions in habeas corpus are civil in nature, and a judgment therein is reviewable by writ of error. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

The rules of civil procedure do not govern the procedure and practice in any special statutory proceeding so far as they are inconsistent or in conflict therewith; this section concerning habeas corpus in criminal matters is such special statutory proceeding and its provisions are controlling. Wright v. Tinsley, 148 Colo. 258, 365 P.2d 691 (1961).

Because this section is a special statutory proceeding, the rules of civil procedure do not apply insofar as they are inconsistent or in conflict with the provisions of this section. Evans v. District Court, 194 Colo. 299, 572 P.2d 811 (1977).

There is no conflict between C.R.C.P. 98 and this section. Evans v. District Court, 194 Colo. 299, 572 P.2d 811 (1977).

Neither do rules governing proceedings on error in criminal cases. Habeas corpus is in the nature of a civil action, hence the rules governing proceedings on error in criminal cases do not apply, and an abstract of the record and assignments of error are not necessary. Barrett v. People, 136 Colo. 144, 315 P.2d 192 (1957), overruled on another point, Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

No class action may be brought. Although habeas corpus is a civil proceeding, the rules of civil procedure, providing for class actions, do not apply. The very nature of habeas corpus proceedings forfends class actions. Riley v. City County of Denver, 137 Colo. 312, 324 P.2d 790 (1958).

Rules of civil procedure do govern venue. Suits seeking relief by habeas corpus being civil in nature, the question of venue is governed by Colorado rules of civil procedure. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Habeas corpus being civil in nature, C.R.C.P. 98 governs venue. Evans v. District Court, 194 Colo. 299, 572 P.2d 811 (1977).

Jurisdictional requirement. Requirement that petitions for writs of habeas corpus shall be accompanied by a copy of the warrant of commitment is a mandatory requirement and is therefore jurisdictional.

Prisoners must comply with the requirement, and the courts may not waive it. Evans v. District Court, 194 Colo. 299, 572 P.2d 811 (1977); Butler v. Zavaras, 924 P.2d 1060 (Colo. 1996).

Rules of civil procedure apply to habeas corpus actions when the rules are not in conflict with habeas corpus statutes. Zaborski v. Dept. of Corr., 812 P.2d 236 (Colo. 1991).

This act contemplates a less structured and more abbreviated hearing procedure than that used in other civil proceedings. Under the act, the court shall act in a summary way. Cardiel v. Brittian, 833 P.2d 748 (Colo. 1992).

Applied in

Gomez v. Colo. State Parole Bd., 470 F. Supp. 778 (D. Colo. 1979); Shea v. Heggie, 624 F.2d 175 (10th Cir. 1980); Beals v. Wilson, 631 P.2d 1181 (Colo. App. 1981); Holder v. Ricketts, 650 P.2d 544 (Colo. 1982); Schumm v. Nelson, 659 P.2d 1389 (Colo. 1983).

II. GROUNDS FOR ISSUANCE.

A. In General.

In order to invoke the remedy of habeas corpus, adequate grounds must be alleged. McKenna v. Tinsley, 141 Colo. 63, 346 P.2d 584 (1959), cert. denied, 362 U.S. 981, 80 S. Ct. 1066, 4 L. Ed. 2d 1015 (1960).

Habeas corpus is a limited remedy in Colorado. Smith v. Tinsley, 223 F. Supp. 68 (D. Colo. 1963); Martinez v. Tinsley, 241 F. Supp. 730 (D. Colo. 1965).

In a habeas corpus action by a person convicted of a crime, the sole question for consideration is whether the petitioner therein was convicted in a court having jurisdiction of his person and of the charge in the information, and the judgment and sentence were within the statutory limitations. Freeman v. Tinsley, 135 Colo. 62, 308 P.2d 220, cert. denied, 355 U.S. 843, 78 S. Ct. 65, 2 L. Ed. 2d 52 (1957); McGrath v. Tinsley, 138 Colo. 18, 328 P.2d 579 (1958); Mendez v. Tinsley, 139 Colo. 127, 336 P.2d 706 (1959); Lowe v. People, 139 Colo. 578, 342 P.2d 631 (1959); McKenna v. Tinsley, 141 Colo. 63, 346 P.2d 584 (1959), cert. denied, 362 U.S. 981, 80 S. Ct. 1066, 4 L. Ed. 2d 1015 (1960); Medberry v. Patterson, 142 Colo. 180, 350 P.2d 571 (1960); Trueblood v. Tinsley, 148 Colo. 503, 366 P.2d 655 (1961), cert. denied, 370 U.S. 929, 82 S. Ct. 1570, 8 L. Ed. 2d 507 (1962); Kostal v. Tinsley, 152 Colo. 196, 381 P.2d 43 (1963); Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963); Titmus v. Tinsley, 153 Colo. 96, 384 P.2d 728 (1963); Specht v. Tinsley, 153 Colo. 235, 385 P.2d 423 (1963); Smith v. Tinsley, 223 F. Supp. 68 (D. Colo. 1963); King v. Tinsley, 158 Colo. 99, 405 P.2d 689 (1965); Martinez v. Tinsley, 241 F. Supp. 730 (D. Colo. 1965); Shearer v. Patterson, 159 Colo. 319, 411 P.2d 247 (1966).

B. Rights Protected.

Right to speedy trial is protected by habeas corpus. The proceeding by habeas corpus is the proper remedy, under the statute of this state, to protect the right of persons charged with the higher class of crimes to a speedy trial, according to law. In re Garvey, 7 Colo. 502, 4 P. 758 (1884); Cummins v. People, 4 Colo. App. 71, 34 P. 734 (1893); Rader v. People, 138 Colo. 397, 334 P.2d 437 (1959).

Right to speedy trial may now be raised under Crim. P. 35(b). When the issues before a trial court in a habeas corpus proceeding raise substantive constitutional questions concerning the right to a speedy trial, the issues are within the purview of postconviction remedy, and a petition for habeas corpus would be treated as a motion under Crim. P. 35(b). Dodge v. People, 178 Colo. 71, 495 P.2d 213 (1972).

Defendant's writ of habeas corpus was properly denied because speedy trial claims should be pursued through C.A.R. 21 petitions and post-conviction remedies under Crim. P. 35. Vreeland v. Weaver, 193 P.3d 836 (Colo. App. 2008).

Habeas corpus is not the proper remedy to accomplish modification of a sentence. Wright v. Tinsley, 148 Colo. 258, 365 P.2d 691 (1961).

Or when an arraignment is faulty. Habeas corpus is not available for an alleged denial of due process occasioned by a faulty arraignment or a coerced plea. Smith v. Tinsley, 223 F. Supp. 68 (D. Colo. 1963). See Specht v. Tinsley, 153 Colo. 235, 385 P.2d 423 (1963).

Or for involuntary pleas. Habeas corpus is not the proper remedy to secure an accused's release from the penitentiary after the imposition of sentence upon a plea of guilty, on the ground that the plea was involuntarily made. Lowe v. People, 139 Colo. 578, 342 P.2d 631 (1959).

Where allegations of a petition for habeas corpus relief go to validity of petitioner's plea of guilty, they are properly brought under Crim. P. 35(b). Martinez v. Tinsley, 158 Colo. 236, 405 P.2d 943 (1965).

Crim. P. 35 also affords a remedy for an improper sentence. Crim. P. 35 in no way seeks to impose any conditions on the issuance of habeas corpus writs -- it only affords a remedy for those seeking a proper sentence, a remedy which the prisoner may seek or not seek at his election. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Incarceration in an institution other than that provided by law is void. Habeas corpus does not lie to obtain release from an erroneous sentence, but a sentence beyond the jurisdiction of the sentencing court, or providing for incarceration in an institution other than that provided by law is void. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Trial judge's discretion as to institution not reviewable by habeas corpus. Where the sentence of one convicted of a crime to the state reformatory or to the penitentiary rests in the discretion of the trial court, a petition for a writ of habeas corpus is properly denied where the record discloses that the petitioners, who were 18 years of age, had four previous convictions for various offenses and the probation officer recommended sentences to the penitentiary rather than to the state reformatory, and petitioners were so sentenced. Roy v. Tinsley, 142 Colo. 241, 350 P.2d 564 (1960).

An adjudication that an insane person has been restored to reason cannot be had in habeas corpus proceedings. Pigg v. Tinsley, 158 Colo. 160, 405 P.2d 687 (1965).

Once adjudged sane, a person's imprisonment may be tested by habeas corpus. The proper method for appellant who was transferred to state penitentiary from state hospital after acquittal on grounds of

insanity to test the constitutionality of his imprisonment is by a habeas corpus proceeding either in the state or federal courts. Franklin v. Meredith, 386 F.2d 958 (10th Cir. 1967).

A person on parole can resort to the remedy of habeas corpus where parole officers are not following the statutory mandate with regard to revocation proceedings. Schooley v. Wilson, 150 Colo. 483, 374 P.2d 353 (1962).

When parolee is actually, instead of constructively, imprisoned. Parolee's actual imprisonment at a time when he should have been only constructively imprisoned constituted an unlawful restraint of his liberty. Schooley v. Wilson, 150 Colo. 483, 374 P.2d 353 (1962).

Prisoner extradited to Colorado cannot contest extradition by this writ. Detention under extradition and detention following conviction of a crime relate to different procedures, and an illegal extradition is impotent to endanger a jurisdictional question arising out of the criminal charge. Lowe v. People, 139 Colo. 578, 342 P.2d 631 (1959).

Sheriff's holding of fugitive prior to extradition to another state may. A habeas corpus petitioner charged as an out-of-state fugitive, not the sheriff-respondent, has the burden of going forward with clear and convincing evidence to prove that he was not in the demanding state at the time of the crime or that he is not the individual named in the extradition papers. Ede v. Bray, 178 Colo. 99, 495 P.2d 1139 (1972).

Where the record does not show that the petitioner for writ of habeas corpus is charged with any offense under the laws of the demanding state, a warrant for arrest issued pursuant to a demand for extradition is without authority of law. Buhler v. People, 151 Colo. 345, 377 P.2d 748 (1963).

The issuance of a governor's warrant is prima facie evidence that a habeas corpus petitioner is substantially charged with a crime and is a fugitive from justice. Ede v. Bray, 178 Colo. 99, 495 P.2d 1139 (1972).

Remedy for improper treatment in mental hospital. Writ of habeas corpus is a proper remedy for persons committed to a state hospital after a plea of not guilty by reason of insanity to challenge a lack of treatment and to obtain a remedy addressing appropriate treatment short of immediate release. Marshall v. Kort, 690 P.2d 219 (Colo. 1984).

Denial of free transcript is not grounds for issuance of writ. The denial of a request for a free transcript, even if timely made, affords no basis for the issuance of a writ of habeas corpus. McKenna v. Tinsley, 141 Colo. 63, 346 P.2d 584 (1959), cert. denied, 362 U.S. 981, 80 S. Ct. 1066, 4 L. Ed. 2d 1015 (1960); Medberry v. Patterson, 142 Colo. 180, 350 P.2d 571 (1960).

Habeas corpus is not the correct vehicle to allege invasion of attorney-client relationship by electronic eavesdropping. It should be brought to the attention of the trial court either by a pre-trial motion to suppress or at the trial when the prosecution offers evidence which the defendant claims is "tainted", because of the manner in which it was obtained by the prosecution. Ferrell v. Vogt, 161 Colo. 549, 423 P.2d 844 (1967).

Writ of habeas corpus is proper remedy for claim that defendant is being unconstitutionally denied the opportunity to be considered for parole as other postconviction relief for such claim is not available. Naranjo v. Johnson, 770 P.2d 784 (Colo. 1984); White v. People, 866 P.2d 1371 (Colo. 1994).

Inquiry undertaken in a habeas corpus proceeding is limited to a determination of the validity of the petitioner's confinement at the time of the hearing. White v. People, 866 P.2d 1371 (Colo. 1994); Brant v. Fielder, 883 P.2d 17 (Colo. 1994).

Any restriction in excess of legal restraint that substantially infringes on basic rights may be remedied through habeas corpus, even if total discharge does not result. Naranjo v. Johnson, 770 P.2d 784 (Colo. 1989).

Habeas corpus action will not lie with respect to an inmate's department of corrections security level because such classification does not involve a constitutional right. Reed v. People, 745 P.2d 235 (Colo. 1987).

Habeas corpus relief is not available for review of loss of good-time credits resulting from prison disciplinary proceeding because other remedies are available, and the requested relief would have no current effect on petitioner's confinement. Kodama v. Johnson, 786 P.2d 417 (Colo. 1990).

The court is precluded from granting a writ of habeas corpus where another legal remedy exists. Where the prisoner is subject to the jurisdiction of the Wisconsin authorities, but is in Colorado under the provisions of the Interstate Corrections Compact, a legal avenue exists for him to be returned to the sending state. Brant v. Fielder, 883 P.2d 17 (Colo. 1994).

Habeas corpus petition should be dismissed without a hearing unless factual allegations in the petition make a prima facie showing of invalid confinement or demonstrate a serious infringement of a fundamental constitutional right. White v. People, 866 P.2d 1371 (Colo. 1994).

Habeas corpus petition is properly dismissed where petitioner fails to allege that he is entitled to discharge or that a fundamental constitutional right was violated. Deason v. Kautzky, 786 P.2d 420 (Colo. 1990).

Habeas corpus petition is properly dismissed where petitioner has not alleged he is entitled to immediate release but instead alleges he has been denied credit for earned good time which would grant him an earlier parole date. Pearson v. Diesslan, 848 P.2d 364 (Colo. 1993); Badger v. Diesslan, 850 P.2d 149 (Colo. 1993); Rather v. Colo. State Bd. of Parole, 856 P.2d 860 (Colo. 1993).

Habeas corpus petition is properly dismissed because allegation that department denied prisoner the use of his color television does not allege violation of a fundamental constitutional right. Brant v. Fielder, 883 P.2d 17 (Colo. 1994).

Habeas corpus petition properly dismissed as premature when inmate could not show he was entitled to release at time petition was filed. Thorson v. Dept. of Corr., 801 P.2d 540 (Colo. 1990).

When the municipal court properly had jurisdiction over both the subject matter and the defendant, the failure of the court to advise the defendant of his right to counsel during a guilty plea hearing was not subject to correction by habeas corpus. Mulkey v. Sullivan, 753 P.2d 1226 (Colo. 1988).

Petition under this section moot where petitioner was provided a parole revocation hearing and was represented by counsel prior to the scheduled hearing on the petition made pursuant to this section. Blea v. Colo. State Bd. of Parole, 779 P.2d 1353 (Colo. 1989).

A prisoner mistakenly released before serving a complete sentence is not entitled to have credited against his sentence the time he subsequently served in another state for convictions unrelated to the original sentence because reincarceration would not be inconsistent with fundamental principles of liberty and justice in that the prisoner's conduct after being mistakenly released was not such as to reestablish himself in the community, but to leave the state at his first opportunity and be arrested and convicted of charges in another jurisdiction. Brown v. Brittain, 773 P.2d 570 (Colo. 1989).

Writ of habeas corpus properly denied as inmate's right to payment of postage fees by the state for mailing costs associated with litigation is not a fundamental constitutional right protected by habeas corpus proceeding. Reece v. Johnson, 793 P.2d 1152 (Colo. 1990).

III. DUTIES OF COURT.

A. In General.

A habeas corpus writ is an extraordinary writ which may be procured, not as a matter of right, but in the discretion of the court. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Writ not necessarily issued without probable cause. The writ of habeas corpus is a writ of right, but not necessarily a writ issuable without a showing of probable cause. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

This section, prescribing the duty of the court upon application for a writ of habeas corpus, is mandatory, and to impose other or additional conditions on one seeking the writ is to do that which the constitution and the statute have said shall not be done and amounts pro tanto to a suspension of the writ. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Petitions for habeas corpus must be treated as such and granted or denied. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Prohibition does not lie, in the supreme court or district courts, to prevent courts having jurisdiction of habeas corpus from proceeding to grant or deny the relief requested. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

A court has no power to stay proceedings upon an order directing the unconditional discharge of a prisoner upon a writ of habeas corpus. Geer v. Alaniz, 137 Colo. 432, 326 P.2d 71 (1958).

Petition for a writ of habeas corpus can only be considered after a final judgment. In a criminal prosecution where the defendant stands unarraigned and untried, a petition for a writ of habeas corpus

filed in such action and relating only to preliminary proceedings cannot be considered by the supreme court in the absence of a final judgment. Oates v. People, 136 Colo. 208, 315 P.2d 196 (1957).

Courts will not ordinarily entertain successive applications for writs of habeas corpus based upon the same grounds and the same facts, or on other grounds or facts which existed when the first application was made, whether or not they were presented at that time. Marshall v. Geer, 140 Colo. 305, 344 P.2d 440 (1959).

The judgment of guilt and the sentence imposed on that judgment are presumed to be valid until the contrary is made to appear. Lowe v. People, 139 Colo. 578, 342 P.2d 631 (1959); Medberry v. Patterson, 142 Colo. 180, 350 P.2d 571 (1960); Bates v. Tinsley, 143 Colo. 390, 353 P.2d 76 (1960).

Regulatory provisions for parole contemplate grant of parole by parole board and thereafter either rescission or suspension is necessary to curtail effectiveness prior to release of prisoner. Although parole agreement is anticipated, it is not a condition to grant of parole but a condition to release on parole. Regulations do not suggest that grant of parole not effective until prisoner actually released from custody. Prisoner granted parole to a county detainer and serving consecutive sentence on another conviction made prima facie case for writ of habeas corpus relief when he alleged that parole had not been suspended or rescinded. Cardiel v. Brittian, 833 P.2d 748 (Colo. 1992); Van Riper v. Sheriffof Jefferson County, 868 P.2d 395 (Colo. 1994).

B. Action on Petition.

Where a petition on its face is insufficient, a court is correct in denying it. McGrath v. Tinsley, 138 Colo. 18, 328 P.2d 579 (1958); Valentine v. Tinsley, 143 Colo. 19, 351 P.2d 825 (1960); Furlow v. Tinsley, 151 Colo. 280, 377 P.2d 132 (1962); Bitner v. Tinsley, 151 Colo. 367, 378 P.2d 203 (1963); Titmus v. Tinsley, 153 Colo. 96, 384 P.2d 728 (1963); Minor v. Tinsley, 154 Colo. 249, 389 P.2d 850 (1964); Bizup v. Tinsley, 155 Colo. 131, 393 P.2d 556 (1964); Coleman v. Tinsley, 155 Colo. 245, 393 P.2d 739 (1964); King v. Tinsley, 158 Colo. 99, 405 P.2d 689 (1965).

This is not a denial of due process or equal protection. Denial of a petition for a writ of habeas corpus, which shows upon its face that petitioner is not entitled to any relief, does not deny him due process or equal protection of the law. Hatch v. Tinsley, 143 Colo. 170, 352 P.2d 670 (1960); Bitner v. Tinsley, 151 Colo. 367, 378 P.2d 203 (1963).

Petition for writ must be discharged if it is not accompanied by the warrant of commitment. Failure to follow the provisions of this section, requiring that a petition for a writ of habeas corpus in any supposed criminal matter shall be accompanied by a copy of the warrant of commitment, precludes review of judgment denying petition on writ of error, since the supreme court has nothing but allegations of pleading from which to determine specific convictions upon which commitment was made. Wright v. Tinsley, 148 Colo. 258, 365 P.2d 691 (1961); Garrett v. Knight, 173 Colo. 419, 480 P.2d 569 (1971).

Denial of petition for writ of habeas corpus held correct. People v. Jackson, 180 Colo. 135, 502 P.2d 1106 (1972); Reece v. Johnson, 793 P.2d 1152 (Colo. 1990).

Facts establishing prima facie case entitle petitioner to hearing. Where a petition for a writ of habeas corpus alleged that the petitioner entered his plea of guilty to an information charging him with obtaining moneys by means and use of the confidence game, under the mistaken belief that the charge in the information was proper and correct, whereas in fact all of the acts, deeds, activities, intentions, and actions of petitioner were sufficient at law only to make him guilty of a misdemeanor and service of sentence was begun but was vacated and petitioner discharged by court order, but petitioner was again imprisoned by the warden against his will, such facts were sufficient to establish a prima facie case entitling petitioner to a hearing. People ex rel. Metzger v. District Court, 121 Colo. 141, 215 P.2d 327 (1949); Espinoza v. Tinsley, 154 Colo. 347, 390 P.2d 941 (1964); Osborne v. Van Cleave, 166 Colo. 398, 443 P.2d 988 (1968).

District court incorrectly decided that petitioner had not established a prima facie case where the petitioner presented a notice of parole board action granting parole and no evidence was presented that parole had been rescinded or suspended, as required by parole board regulations. The motion to dismiss should have been denied. Cardiel v. Brittian, 833 P.2d 748 (Colo. 1992).

If no prima facie case is established on face of petition, there is no right to a hearing. Reed v. People, 745 P.2d 235 (Colo. 1987).

C. Jurisdiction.

District courts have original jurisdiction in habeas corpus proceedings. Ex parte Arakawa, 78 Colo. 193, 240 P. 940 (1925); Petition of Phillips, 93 Colo. 203, 24 P.2d 755 (1933); Rogers v. Best, 115 Colo. 245, 171 P.2d 769 (1946); Hart v. Best, 119 Colo. 569, 205 P.2d 787 (1949); Stilley v. Tinsley, 156 Colo. 66, 385 P.2d 677 (1963).

Jurisdiction conferred by this section and constitution. District courts have jurisdiction in habeas corpus proceedings under this section as well as under the provisions of § 11 of art. VI, Colo. Const. People ex rel. Metzger v. District Court, 121 Colo. 141, 215 P.2d 327 (1949).

This section uses the plural "district courts", without any limitation. To say that any district court is without jurisdiction to determine questions properly presented by petitions for habeas corpus runs head-on into and does violence to the above legislative pronouncement. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Applicant may seek the writ in the most convenient forum. This supreme court accepts this section at its face value and so construes it as to make applications for the writ available in the forum most convenient for the applicant, and recognize no restrictions attempted to be imposed upon the right of one to choose any forum provided by statute for asserting his rights and the protection afforded by the constitution and statutes. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Petitions should be addressed to the district court, not an individual judge. Except in vacation, petitions should be addressed to the district court, not to an individual judge, because the power to act is the court's, not the man's. People ex rel. Wyse v. District Court, 180 Colo. 88, 503 P.2d 154 (1972).

Jurisdiction will be presumed to issue the writ. By this section the district courts and the judges thereof are given general jurisdiction to issue the writ of habeas corpus, and the jurisdiction to issue the writ in a particular case will be presumed in the absence of a showing to the contrary. People v. District Court, 6 Colo. 534 (1883); Atchison, T. S. F. R. R. v. Nicholls, 8 Colo. 188, 6 P. 512 (1885); Cooper v. People ex rel. Wyatt, 13 Colo. 337, 22 P. 790 (1889).

The supreme court may also assume original jurisdiction in habeas corpus cases, but the writ in such a case may not be used as a writ of error. People ex rel. Burchinell v. District Court, 22 Colo. 422, 45 P. 402 (1896); In re Popejoy, 26 Colo. 32, 55 P. 1083 (1899); Martin v. District Court, 37 Colo. 110, 86 P. 82 (1906); Ex parte Stidger, 37 Colo. 407, 86 P. 219 (1906); Ex parte Arakawa, 78 Colo. 193, 240 P. 940 (1925); Hart v. Best, 119 Colo. 569, 205 P.2d 787 (1949).

The justices of the supreme court acting singly or out of term, are without constitutional jurisdiction and authority to issue the writ of habeas corpus or to hear or determine the matters arising thereon, despite the authority attempted to be given by this section. In re Garvey, 7 Colo. 502, 4 P. 758 (1884).

Writ of habeas corpus may not be prosecuted in a district court to challenge an order of a different district court in another judicial district concerning presentence confinement credit. Pipkin v. Brittain, 713 P.2d 1358 (Colo. App. 1985).

A court may correct an excessive sentence. Where a judgment is merely excessive and the court which pronounces it is one of general jurisdiction, it is not void ab initio because of the excess, but is good so far as the power of the court extends, and is invalid only as to the excess, and therefore a person in custody under such sentence cannot be discharged on habeas corpus until he has suffered or performed so much of it as it is within the power of the court to impose. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

If an illegal sentence has been pronounced, the court has power to substitute a legal sentence, and this power is not impaired by the expiration of the term of court, during which the judgment was pronounced. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

An improper mittimus will be corrected, but prisoner will not be discharged. Where upon petitioner's own showing, the only relief to which he was entitled was a correction of the wording of the mittimus under which he was confined to conform to the judgment, the issuance of a new mittimus and the denial of discharge on a writ of habeas corpus was proper. Sexton v. People, 143 Colo. 35, 351 P.2d 842 (1960); Bernard v. Tinsley, 144 Colo. 244, 355 P.2d 1098 (1960), cert. denied, 365 U.S. 830, 81 S. Ct. 718, 5 L. Ed. 2d 708 (1961).

Unless the mittimus is void. Where release on habeas corpus is sought on the ground that the sentence imposed on a petitioner is void, and the court determines that mittimus under which the warden of a prison held the petitioner is void, the court's only duty is to order the petitioner released from the custody of the warden. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Or a commutation superceded the mittimus. The alleged commutation, if true, may entitle petitioner to some relief. The commutation superceded the mittimus issued upon the original conviction and reduced

the petitioner's minimum sentence. Unless it be shown by some evidence in a hearing that the commutation of the governor was revoked, the petitioner could not be required by the warden or the parole board, or anyone else, to resume serving the five year minimum sentence originally imposed by the court. They are not apparent on the face of the petition. It may be that, had a hearing been held and these records produced, the court would have been justified in discharging the writ. The error committed is the summary refusal by the court to issue the writ or grant a hearing when the allegations on the face of the petition indicated recitals that entitled the petitioner to the writ forthwith. Sharp v. Tinsley, 147 Colo. 84, 362 P.2d 859 (1961).

Petitioner may seek federal habeas corpus when all state remedies are exhausted. Where the Colorado supreme court had reached a conclusion on the substantive issue of the legality of a search and seizure, this portion of the decision was only dictum and therefore not binding upon a trial court where it is stated in such a way that under ordinary circumstances, a trial court would feel bound by the decision, and would therefore deny a motion made pursuant to Crim. P. 35(b) on the grounds that the Colorado supreme court had already decided the question; where habeas corpus was unavailable to the petitioner, for all practical purposes the petitioner has exhausted his state remedies and a petition for federal habeas corpus was properly before the district court. Peters v. Dillon, 227 F. Supp. 487 (D. Colo. 1964), aff'd on other grounds, 341 F.2d 337 (10th Cir. 1965).

But, not so long as trial court had jurisdiction over the crime, defendant, and sentence. Habeas corpus will never lie to afford relief from a conviction obtained at a trial at which any of the defendant's federal or state constitutional procedural rights have been violated, so long as the trial court in question had jurisdiction over the crime and over the defendant and imposed a sentence within statutory limits. No matter how unfair the trial, no matter what constitutional rights were violated, habeas corpus cannot be used to remedy the wrong. Peters v. Dillon, 227 F. Supp. 487 (D. Colo. 1964), aff'd on other grounds, 341 F.2d 337 (10th Cir. 1965).

Petitions dismissed for failure to exhaust state judicial remedies. Petitions for federal writ of habeas corpus were dismissed on the grounds that the petitioner had failed to exhaust available state judicial remedies which could provide the relief he sought. Peterson v. Ricketts, 495 F. Supp. 312 (D. Colo. 1980).