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# Justice Delayed is Justice Denied: May a Prisoner's Challenge to Parole Revocation Be Delayed Until the Sentence is Completed and then Dismissed as Moot?

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# Case at a Glance

Normally federal habeas corpus relief is available only to someone who is in custody. But an individual who is not in custody may be entitled to relief if he or she suffers existing disabilities, such as loss of the right to vote, because of the conviction to be challenged. Here the Supreme Court decides whether the risk of future disabilities entitles a noncustodial habeas petitioner to relief. The Court also decides whether a petitioner is entitled to relief when prosecutors and the court delay acting on a petition until after the petitioner's sentence is served.



## “Justice Delayed Is Justice Denied”: May a Prisoner’s Challenge to Parole Revocation Be Delayed Until the Sentence Is Completed and Then Dismissed as Moot?

by Jimmy Gurulé

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Article III of the Constitution confers jurisdiction on federal courts to hear only those actions in which there is a genuine case or controversy. U.S. CONST. art. III, § 2. Thus a case must be dismissed as moot “when by virtue of an intervening event, a court of appeals cannot grant any effectual relief whatever in favor of the appellant.” *Moore v. Calderon*, 116 S. Ct. 2066, 2067 (1996) (per curiam, see Glossary).

The Supreme Court has “furnished contradictory signals” regarding when a federal court can dismiss as moot a federal habeas corpus petition (see Glossary) filed by an individual whose prison sentence has been completed. See *Robbins v. Christianson*, 904 F.2d 492, 496 (9th Cir. 1990) (Noonan, J., dissenting). While historically habeas corpus relief is available only to terminate wrongful confinement, *Fay v. Noia*, 372 U.S. 391 (1963), the Court has created an exception to the mootness doctrine and allowed a habeas petition to be heard when “collateral legal consequences” flow from the challenged criminal proceeding. In such a case, the peti-

tioner may pursue habeas relief even after release.

In *Carafas v. LaVallee*, 391 U.S. 234 (1968), the petitioner applied to federal district court in New York for a writ of habeas corpus, claiming that illegally obtained evidence had been introduced against him at trial. Though the petitioner was in custody when the petition was filed, his sentence expired before the court ruled on the petition.

The Supreme Court held that expiration of the petitioner’s sentence did not render the habeas petition moot. Citing New York law, the Court observed that “in consequence of conviction, he cannot engage in certain businesses; he cannot serve as an official of a labor union for a specified period of time; he cannot vote in any election held in New York State; he cannot serve as a juror.” *Carafas*, 391 U.S. at 237. Thus because of the “collateral consequences” that survived the habeas petitioner’s sentence, the

RANDY G. SPENCER V.  
MICHAEL L. KEMNA AND  
JEREMIAH W. (JAY) NIXON  
DOCKET NO. 96-7171

ARGUMENT DATE:  
NOVEMBER 12, 1997  
FROM: THE EIGHTH CIRCUIT



mootness doctrine did not deprive the court of jurisdiction to decide the issues raised.

The Court expanded the *Carafas* collateral consequences rule, which is an exception to the mootness doctrine, in *Sibron v. New York*, 392 U.S. 40, 57 (1968), holding that after a habeas petitioner has completed his or her sentence, the case is moot only if there is “no possibility that any collateral legal consequences” will result from the conviction being challenged. The Court concluded that *Sibron* had established two collateral consequences sufficient to defeat a claim of mootness: under New York law his misdemeanor conviction could be used to enhance his sentence in future criminal proceedings and to impeach his character in a future trial.

The collateral consequences rule, however, is narrower in the context of parole revocation. *Lane v. Williams*, 455 U.S. 624 (1982). In *Lane*, two Illinois offenders contested their reincarceration for parole violations, arguing that they were not advised of the state’s mandatory parole period.

The Court held that a federal court can decide a habeas corpus action after the habeas petitioner is released from custody only when the collateral consequences of the challenged criminal proceeding trigger “existing *civil* disabilities” that survive completion of the sentence. *Lane*, 455 U.S. at 632 n.13. Although Illinois law permitted the parole board to consider the petitioners’ parole revocations in future parole determinations, the Court stressed that the petitioners were “able — and indeed required by law — to prevent such a possibility from occurring” by not committing additional crimes. *Lane*, 455 U.S. at 632-633 n.13. The Court further

rejected the notion that the petitioners’ employment prospects or the possibility of future sentence enhancement constituted collateral consequences because the employer or judge could consider the conduct underlying the parole revocations.

Three years later, in *Evitts v. Lucey*, 469 U.S. 387, 391 n.4 (1985), the Court suggested a far more expansive interpretation of collateral consequences. The Court implied that a noncustodial petitioner’s habeas petition was not moot because the petitioner had not been pardoned, and his conviction still subjected him to persistent felony-offender prosecution should he be tried on future felony charges. Further, the conviction being challenged could be used to impeach him in a future proceeding.

Relying on the language of *Evitts*, some lower courts have ignored or distinguished *Lane*, creating confusion over when the habeas petition of a petitioner whose sentence has expired is moot and over the type of collateral consequences that can defeat mootness. See e.g., *United States v. Parker*, 952 F.2d 31 (2d Cir. 1991) (the case was not moot because under New York law a probation violation could affect the possibility of parole on a subsequent unrelated charge); *Chacon v. Wood*, 36 F.3d 1459 (9th Cir. 1994) (“once convicted, one remains forever subject to the prospect of harsher punishment for a subsequent offense as a result of federal and state laws that either already have been or may eventually be passed”); *Robbins*, 904 F.2d at 495-496 (9th Cir. 1990) (collateral consequences existed because the defendant would be subject to greater penalties under the Federal Sentencing Guidelines if he ever violated federal law in the future).

The Supreme Court in this case is asked to revisit the collateral consequences doctrine and resolve the apparent inconsistency that currently exists in the case law. Specifically, the Court decides whether only “existing civil disabilities” — sanctions imposed by law that have a current adverse effect on the defendant — constitute collateral consequences or whether a habeas petitioner can avoid the mootness doctrine by asserting some potential future harm.

An additional fact complicates the mootness issue in this case. The state attorney general’s office and district court delayed the response to and disposition of Randy Spencer’s habeas petition until he completed his sentence. Spencer maintains that it would be unfair to permit the prosecutor and district court to defeat his claim by asserting mootness that they themselves orchestrated.

## ISSUES

1. May a state attorney general’s office and district court delay their response to and disposition of a habeas petition until the petitioner has completed his or her sentence and the habeas claim arguably is moot and then rely on mootness resulting from their delay to deny relief?
2. Was the Eighth Circuit wrong in holding that a habeas corpus action challenging a parole revocation was moot, when the habeas petitioner was in custody as a result of the revocation at the time he filed the petition and when state and federal law render the petitioner liable to testimonial impeachment and sentence enhancement as a result of the revocation?

(Continued on Page 108)



## FACTS

Randy Spencer was convicted in Missouri on burglary and theft charges and sentenced to two three-year terms of imprisonment to be served concurrently. He began serving his sentences on October 17, 1990, and was paroled on April 16, 1992.

The Missouri Board of Probation and Parole revoked Spencer's parole on September 24, 1992, because of allegations in a parole violation report that Spencer had used crack cocaine, committed rape, and threatened the rape victim with a dangerous weapon. Spencer, however, was never charged with respect to any of these offenses.

Spencer challenged the parole revocation in Missouri courts but to no avail. On April 1, 1993, he turned to federal court, filing a habeas corpus petition against Michael Kemna, Superintendent of the Western Missouri Correctional Center, and Jeremiah Nixon, the Attorney General of Missouri (collectively, "the State officials"). Spencer, acting without counsel, alleged four grounds for relief: (1) he was denied the right to a preliminary revocation hearing on the dangerous weapon accusation; (2) his conditional release date of October 16, 1992, was suspended without a hearing; (3) his parole revocation hearing did not satisfy due process because he was denied counsel of his choice, was not allowed to confront adverse witnesses, and the sole evidence against him was the violation report; and (4) it took four months to receive a statement of the reasons why his parole was revoked.

The district court ordered the State officials to show cause by June 3, 1993, why relief should not be granted. Two different attorneys for the State officials subsequently

requested and received two extensions of time until July 7, 1993, to file a response. Both extensions were granted over Spencer's objections.

The State officials filed their response on July 7, 1993, arguing that Spencer's claims were procedurally barred. They also asserted that his claims should be dismissed as baseless.

Spencer countered on July 14 with a motion for final disposition of his petition. Spencer noted that he could be released from custody as early as August 7, 1993, and he would suffer irreparable harm if his petition became moot, leaving him no other way to vindicate his rights. Spencer expressly alleged that the State officials' motive in requesting the extensions was to cause his petition to become moot.

The district court took no immediate action and Spencer was released on parole on August 7, 1993; he was discharged from parole at the completion of his sentences on October 16, 1993. Almost two years later, on August 23, 1995, the district court dismissed Spencer's habeas petition as moot because Spencer had completed serving the underlying sentence.

Spencer appealed the order of dismissal to the Eighth Circuit, arguing that the district court erred in declaring his petition moot because the court's own delays caused the mootness. He further claimed that he would suffer adverse future consequences as a result of the court's failure to decide his claim that the parole revocation violated his due process rights. Here Spencer noted his current incarceration on unrelated charges and maintained that his prior parole revocation would affect his future chances for parole.

The Eighth Circuit affirmed. 91 F.3d 1114 (8th Cir. 1996). The court reasoned that while the Supreme Court in *Carafas* held that a habeas challenge to a criminal conviction is not rendered moot by the expiration of the underlying sentence as long as substantial civil penalties survive the sentence, the Court held in *Lane* that no similar penalties result from a finding that an individual has violated parole. According to the Eighth Circuit, no civil disabilities result from parole revocation. In particular, any collateral consequence arising from Spencer's parole revocation on future parole decisions was "insufficient to bring this case within the doctrine of *Carafas*." 91 F.3d at 1117.

The Eighth Circuit rejected Spencer's attempt to distinguish his case from *Lane* on the ground that the collateral consequences of his parole revocation are not speculative because he is once again incarcerated and will face new parole hearings. The court concluded that possible collateral consequences in Spencer's case remained too speculative to overcome the mootness doctrine.

The Supreme Court reviews the decision of the Eighth Circuit, having granted Spencer's petition for a writ of certiorari. 117 S. Ct. 1425 (1997).

## CASE ANALYSIS

Spencer advances two principal arguments. First, he maintains that by delaying his case until he had served his entire sentence, he has been denied his only avenue of redressing what he contends was an improper parole revocation. (In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), the Supreme Court held that habeas corpus is the "sole federal remedy" for state prisoners to challenge the fact or duration of



their custody.) Because the district court granted the State officials' motions for extension and delayed the disposition of his petition until after he had served his sentence, Spencer claims that he has been denied any federal forum to vindicate his federal constitutional rights.

Spencer argues that when the government delays its response and the district court postpones its disposition of the matter until after the petitioner's sentence is served, the habeas claims should not be rendered moot just because the petitioner has been released from custody. Says Spencer, the government should not be permitted to manipulate the outcome of the habeas case by delaying the filing of its response until the eve of the petitioner's release from custody.

In the alternative, Spencer asserts that the Court should recognize an exception to the rule that habeas corpus is the sole federal remedy for a state prisoner's challenge to the fact or duration of custody. Because Spencer was denied the opportunity to have his federal claims resolved on the merits, he maintains that he should be permitted a different legal route to vindicate the violation of his constitutional rights — a civil rights action for damages (*see* Glossary) under 42 U.S.C. § 1983 (1994).

Spencer's second principal argument maintains that parole revocation has collateral consequences that defeat an assertion of mootness. He argues that the same factors that keep criminal convictions alive after a habeas petitioner is released also keep probation and parole revocations alive after a petitioner's re-release or discharge. In other words, the same legal standard for determining collateral consequences should apply whether the habeas petitioner challenges a crim-

inal conviction or a parole revocation. Thus, concludes Spencer, the expansive standard for determining collateral consequences adopted by the Court in *Sibron* and regarded with favor in *Evitts* should be applied when habeas relief is sought based on parole revocation.

Spencer cites several collateral consequences arising from his parole revocation. He notes that the revocation was based on a rape allegation, which exposes him to prosecution as a predatory sexual offender. MO. REV. STAT. § 558.018(4) (Supp. 1996). If convicted of a sex crime in the future, he maintains that he would be subject to an enhanced sentence of life imprisonment with eligibility for parole, but without eligibility for discharge from parole. He further asserts that his parole revocation would have an adverse effect on his criminal history category under the Federal Sentencing Guidelines. Thus in the event of a future federal criminal conviction, he would receive a longer sentence than a federal court otherwise would impose.

The list goes on. Spencer points out that under Missouri law his parole revocation could be used to impeach him in a future criminal proceeding. Finally, he alleges that under Federal Rule of Evidence 413 his parole revocation on a sex offense may be used as substantive adverse evidence should he be charged with a sex offense under federal law. Spencer concludes that the possibility of being exposed to these collateral consequences at some future time thus defeats the State officials' claim that his habeas petition is moot.

The State officials, on the other hand, argue that the asserted consequences of a parole revocation identified by Spencer are not the kinds of civil disabilities that create a case

or controversy under Article III such that federal courts have jurisdiction to decide his habeas claims. The State urges the Court to adhere to its holding in *Lane* under which a habeas petitioner whose sentence is completed can proceed only on a showing that he or she will suffer from a present civil disability from the government's action being challenged. In short, says the State, speculative injuries based on a habeas petitioner's possible future misconduct are insufficient collateral consequences to defeat mootness.

The State officials close by arguing that nothing in the record supports Spencer's contention that their attorneys acted negligently or in bad faith in responding to his habeas petition. The State officials maintain that neither of the two motions for extension of time was designed to deprive Spencer of the right to challenge his parole revocation. Thus there is no basis for concluding that the extensions could provide a reason for excusing mootness.

## SIGNIFICANCE

The Supreme Court's decision in this case will be important for several reasons. Substantial confusion exists in the case law regarding the application of the mootness doctrine when a habeas petitioner challenges a parole revocation but is re-paroled or completes the underlying sentence before the habeas case is decided. One issue that the Court must decide in this case is whether the mootness doctrine applies differently depending on whether the habeas petitioner is challenging a conviction or a parole revocation.

Framed more specifically, the issue is whether the collateral consequences exception to mootness should be construed broadly when considering a habeas petitioner's challenge to a conviction and more

(Continued on Page 110)



narrowly when the petitioner challenges a parole revocation. When the habeas petitioner challenges a criminal conviction, is the case moot only if there is “no possibility that any collateral legal consequences” will result from the conviction as the Court held in *Sibron*? Or when a petitioner challenges a parole revocation, should the claim be considered moot unless the collateral consequences trigger “existing civil disabilities,” such as denial of the right to vote or hold certain offices, as suggested by the Court in *Lane*? The answer to these questions may hinge on the answer to a more basic one: If the collateral consequences doctrine should be applied differently, what is the justification for the disparate approach?

The case also allows the Court to opine on the legal significance, if any, of prosecutors and district courts delaying the resolution of a habeas corpus petition until the prisoner’s underlying sentence has expired. Should the prosecutor and district court be permitted to defend the dismissal of the action as moot? Should the answer depend on whether the prosecutor or district court acted negligently or in bad faith? These are only a few of the thorny questions confronting the Court in this case.

## ATTORNEYS OF THE PARTIES

**For Randy G. Spencer** (John William Simon; (573) 634-2522).

**For Michael L. Kemna and Jeremiah W. (Jay) Nixon** (Michael J. Spillane, Assistant Attorney General of the State of Missouri; (573) 751-3321).

## AMICUS BRIEFS

**In support of Michael L. Kemna and Jeremiah W. (Jay) Nixon**

Joint brief: California and 16 other states (Counsel of Record: Peggy S. Ruffra, Deputy Attorney General of the State of California; (415) 356-6142).