

Connecticut General Assembly

Habeas Corpus Matters Task Force

Merit Lajoie & Kenneth Rosenthal, Esq.
Cochairpersons



c/o Judiciary Committee, Room 2500
Legislative Office Building
300 Capitol Avenue
Hartford, Ct 06106

MEETING MINUTES

Thursday, July 17th, 2019

2:00 PM in Room 2B of the LOB

The meeting was called to order at 2:00 PM by Co-Chairs, Merit Lajoie and Kenneth Rosenthal, Esq.

The following task force members were present:

Representative Judge Thomas Bishop; Judge William Bright; Judge Carl Schuman; Judge Samuel Sferrazza; Nicole Anker (in for Rollin Cook); Professor Tim Everett; Kevin Kane; Co-Chair Merit Lajoie; Chief Public Defender Christine Rapillo; Charles Ray; Co-Chair Kenneth Rosenthal, Esq.

Absent were:

Representative Maria Horn, 064; Representative Rosa Rebimbas 070; Senator John A. Kissel, S7

After convening and approving the minutes for the previous meeting, the task force transitioned into the judicial branch's presentations:

The first presentation was given by Kathryn Stackpole, the assistant clerk for Habeas Matters for the Rockville Superior Court. The process through which Habeas petitions go from filing to disposition or renewal was outlined. Newly filed petitions are screened by the clerk's office in several respects: (1) Procedural screening—the petitions are first reviewed to determine if they are properly and fully completed and whether they present a claim cognizable on habeas/ within the jurisdiction of the habeas court—procedurally deficient petitions are returned to the petitioner as declined, with an indication of the deficiencies, and without opening a case in court; (2) Substantive screening -- for the petitions which satisfy the procedural screening, the clerk's office performs a substantive review to flag those that appear to be frivolous on their face, and, in the case of successive petitions, to examine any prior habeas case previously filed or decided (the pro se form requires the petitioner to list any such prior actions up front, although the clerk's office performs its own search to verify if there have been previous habeas petitions,

Connecticut General Assembly

Habeas Corpus Matters Task Force

Merit Lajoie & Kenneth Rosenthal, Esq.
Cochairpersons



c/o Judiciary Committee, Room 2500
Legislative Office Building
300 Capitol Avenue
Hartford, Ct 06106

and if so whether the same claim(s) appear to have been already raised previously). The results of the clerk's substantive screening are then provided to the habeas judge, who makes the ultimate decision of whether or not the petition should be (a) rejected under P.B. 23-24, or (b) dismissed under PB § 23-29 *ab initio*. There was some discussion on this point (and again in the presentation from Judge Oliver summarized below) concerning whether dismissal at this early stage should await appointment of counsel and/or a hearing – an issue that several participants indicated is currently pending before the Connecticut Supreme Court in *Gilchrest v. Commissioner* and several similar cases.

There was also reference made in the clerk's presentation, and later in the presentation from Judge Oliver, that the number of habeas judges is currently limited (one full time judge, and one additional judge who splits time between the habeas docket and other responsibilities), in contrast to the previous complement of at least two full time habeas judges and an additional split time judge. Limitation of judicial resources was identified as one contributing factor to delay in the processing of habeas cases.

The second presentation was given by Joseph P. Greelish, the director of performance management for the judicial branch. Those statistics indicate that there was a significant spike in the number of new habeas filings in the initial aftermath of the implementation of new statute of limitations provision under the 2012 amendment to Conn. Gen. Stat. § 52-470, reaching a peak of 1,073 new cases added in 2014 (compared to the average annual average between 2008 and 2018 of 679 new cases per year), and thereafter declining in every succeeding year, down to 591 new cases for 2018. There is a related pattern in the statistics on the number of cases disposed, although that number in recent years, including 2018, appears to be significantly above the pre-amendment case disposition rate through the present. In particular, the statistics indicate that subsequent to the 2012 amendment, the number of dismissals has reached and remain at a significantly higher level than prior to the amendment. A summary of case disposition statistics derived from Mr. Greelish's presentation is attached. There were also statistics, not included in the summary, on the relative number of successive petitions. Those statistics, in the chart labeled "disposed

Connecticut General Assembly

Habeas Corpus Matters Task Force

Merit Lajoie & Kenneth Rosenthal, Esq.
Cochairpersons



c/o Judiciary Committee, Room 2500
Legislative Office Building
300 Capitol Avenue
Hartford, Ct 06106

cases by inmate number," likewise attached, indicated that the predominant number of habeas cases involve inmates who have filed only one petition. As Mr. Greelish noted in his comments, these "first-time--only" petitions account for nearly 90% of the disposed cases (and, although not included in the statistics presented, that percentage is presumably even higher with respect to the pending cases, given the available tools for early dismissal of successive petitions under PB 23-24, PB 23-29(3), and the prior pending action doctrine mentioned in the presentations of Ms. Stackpole and Judge Oliver, and a figure the task force may want to request in follow-up with Mr. Greelish). There was also some discussion concerning the availability of further statistical information, and Mr. Greelish indicated availability to respond to such inquiries as needed. The statistics presented by Mr. Greelish are for all habeas petitions filed, including habeas petitions filed challenging the conditions of confinement. The Task Force members expressed an interest in separating out the numbers of habeas petitions relating to challenging the conviction vs. challenging the conditions of confinement.

There followed an illuminating presentation by Judge Vernon D. Oliver which provided the task force with a glimpse into the habeas process from the perspective of the judges. Judge Oliver discussed the tools available to the judiciary under existing habeas court rules, including PB 23-24 and 23-25. In addition, Judge Oliver referred to additional powers available to the habeas judges in summarily disposing of frivolous claims, including the use of the prior pending action doctrine to reject a petition raising claims already covered in an existing case, indicating that in such instances he would point out the availability of amendment to pleadings in the prior pending action. That procedure, in his view, was an antidote to the potential misuse of a successive petitions to bypass the discretionary judgments of appointed counsel in the prior pending action. In addition, it was noted that there has been some talk of amending PB 23-24 to encompass some of the grounds for dismissal currently available under PB 23-29, thereby affording additional grounds for the rejection of duplicative successive petitions *ab initio*.

Connecticut General Assembly

Habeas Corpus Matters Task Force

Merit Lajoie & Kenneth Rosenthal, Esq.
Cochairpersons



c/o Judiciary Committee, Room 2500
Legislative Office Building
300 Capitol Avenue
Hartford, Ct 06106

After further questioning, the task force moved onto presentations from the Division of Criminal Justice: The first to present was Assistant State Attorney Jo Ann Sulik, from the perspective of her decades of experience litigating post-conviction cases on behalf of the State. Attorney Sulik indicated that while there was wisdom in affording the "second look" at a criminal conviction that is provided by the habeas corpus procedure, the process was susceptible, in her experience, to abuse and inefficiency when petitioners were allowed multiple successive petitions thereafter, noting the limited number of habeas cases overall in which relief was achieved and/or upheld on appeal with particular concern for the adverse effects of frivolous claims in impeding the habeas process.

The final DCJ presentation was given by Senior Assistant State's Attorney James Killen, based on his similarly extensive experience litigating habeas corpus cases. Attorney Killen noted the significant portion of the State's Attorney's appellate resources consumed by habeas appeals, identifying the Connecticut Supreme Court's decision in *Simms v. Warden* (and several other cases) in contributing to the issue of time-consuming adjudication of habeas appeals. Attorney Killen suggested consideration of changes to the statutory procedures for screening limiting the availability of appeals in habeas cases, including the possibility of a certiorari procedure at the Appellate Court level, in place of or in addition to the existing certiorari procedure which, under *Simms*, provides little if any screening out of unwarranted appeals. He also noted that the *Anders* procedure for counsel to file motions for withdrawing from frivolous appeals did not adequately address the problem, because even after the granting of an *Anders* motion, the case itself would remain pending before the Court on a pro se basis.

Due to time constraints, the members decided to conclude presentations to preserve time. Following the presentations were public comments.

Member of the public David Keenan, until recently an attorney with the federal defenders office in Connecticut, involved in the recent federal habeas corpus exoneration of a Connecticut inmate, after

Connecticut General Assembly

Habeas Corpus Matters Task Force

Merit Lajoie & Kenneth Rosenthal, Esq.
Cochairpersons



c/o Judiciary Committee, Room 2500
Legislative Office Building
300 Capitol Avenue
Hartford, Ct 06106

lengthy failed attempts to obtain relief through Connecticut state habeas proceedings, spoke to the petitioner's perspective on the habeas process, referring to the experience of the client in the recent federal exoneration, and other recent exonerations as well.

In that regard Attorney Keenan pointed out how the phrase "needle in the haystack" is "misleading", and noted the importance of open file access to records in the underlying criminal case and in the habeas process.

Member of the public Marianne Heffernan made the final public comment, reminding the task force of the importance of considering how the Habeas process can be abused to benefit the guilty at the expense of the victims.

A motion was made and duly seconded to adjourn the meeting at 4:00 pm.

CT Habeas Task Force												
Judicial statistics												
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	
total disposed	558	752	626	631	579	652	659	621	772	648	648	
PB 23-24-decline	71	40	72	39	22	104	76	37	83	84	45	
PB 23-29-dismiss	152	141	92	132	89	115	113	114	179	136	190	
	223	181	164	171	111	219	189	151	262	220	235	
	39.96%	24.07%	26.20%	27.10%	19.17%	33.59%	28.68%	24.32%	33.94%	33.95%	36.27%	
Judgmt after trial	111	128	143	134	143	133	128	101	108	81	89	
	19.89%	17.02%	22.84%	21.24%	24.70%	20.40%	19.42%	16.26%	13.99%	12.50%	13.73%	
withdrawals	169	391	264	273	275	251	316	321	364	323	300	
	30.29%	51.99%	42.17%	43.26%	47.50%	38.50%	47.95%	51.69%	47.15%	49.85%	46.30%	
Number of new filings	863	501	516	505	647	633	1073	823	779	740	591	
Dispos/new filing	64.66%	150.10%	121.32%	124.95%	89.49%	103.00%	61.42%	75.46%	99.10%	87.57%	109.64%	

Disposed Cases by Inmate Number

Frequency of Habeas Case Filings by Distinct Inmates

Total Disposed Habeas Cases 2008 to 2018

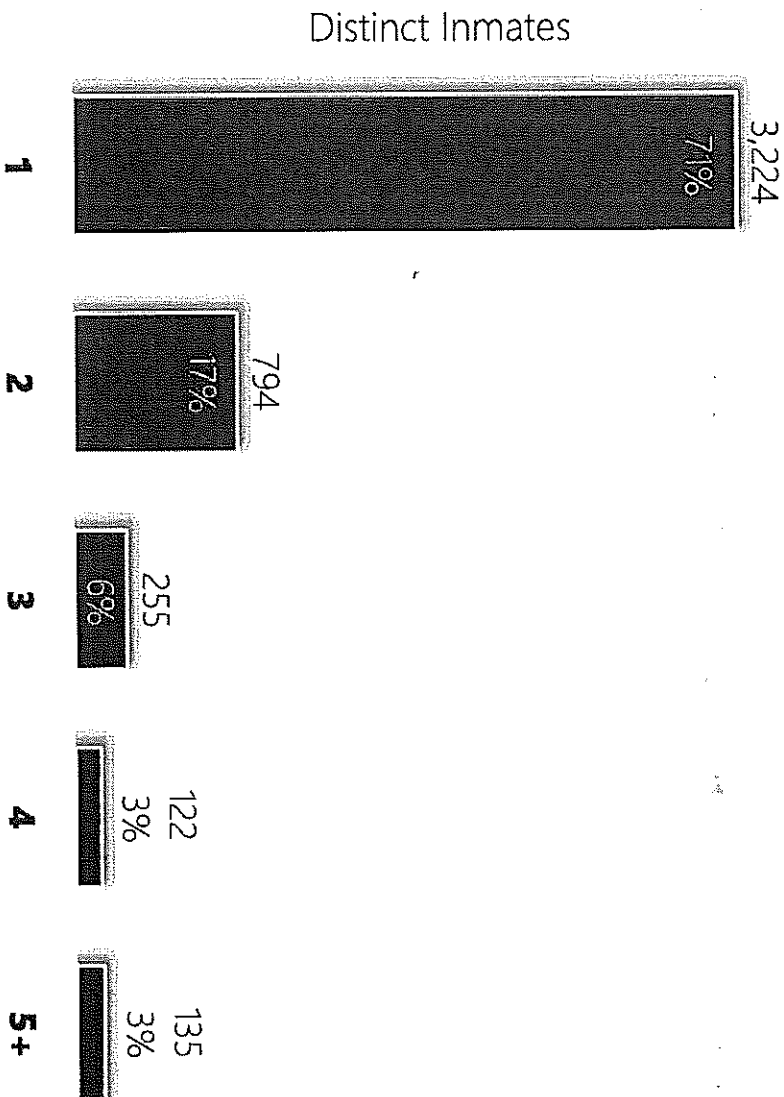
7,146

Cases with an Inmate Number

6,970

Number of Distinct Inmates

4,530



Filing Frequency by Individual Inmates