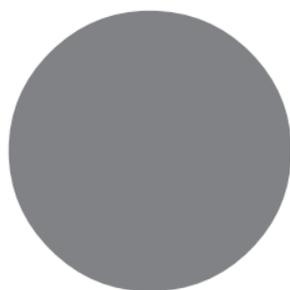


**DO I
have
a case?**
G**UIDELINES**
*for evaluating
habeas cases.*



From the Office of
Walter Reaves

Evaluating your case

Hardly a day goes by when I don't get a letter or Hcall from someone who wants to know if they can do anything about their conviction. Most of the time people have unrealistic expectations about what can be done. The truth is that few people have legitimate claims with a chance of success. The problem is identifying those people with legitimate claims.

While there are no set rules to apply, I can set out some things to be aware of. The most important thing you need to know is that habeas corpus is a last resort; the presumption is that the conviction is valid. There are numerous rules that apply in habeas cases; the purpose of most of them is to ensure that the writ is denied. You always have to remember that a court reviewing a habeas petition assumes you are guilty, and that everything was done properly. Courts do not want to review cases that have already been tried, and they don't want to try them again.

Learning the law

Over the years I have reviewed a lot of cases, and dealt with a lot of inmates. From that experience I have learned a number of things. Many defendants want to learn more about their cases, and the law. They take advantage of the law library, and talk with other inmates. Most inmates who do that sincerely believe that they know the law; almost everyone who researches their case also believes they have grounds for writ. Unfortunately, they are almost always wrong.

There are several reasons why it is so difficult for inmates to learn the law. The most basic is that they haven't gone to law school; many don't even have a high school diploma. There's a reason why you have to go to law school for three years. The primary purpose of law school is not to teach the law – it's to learn how to "think like a lawyer." The law changes, and what you learn in law school is probably not going to be the law 10 years later. You have to know how to find out what the law is, which is not as easy as going to the library and reading a few cases.

Habeas corpus is one of the most complex and complicated areas of the law there is. There are numerous rules, many of which appear to make no sense. For several years I taught post-conviction procedure at Baylor Law School, and discovered how difficult it is to understand habeas law. If second and third year law students have trouble understanding, that tells you how difficult

it is for someone without a legal education to understand. Not to mention the fact that these law students are generally the brightest kids in their high schools and colleges.

There's also the fact that the inmate reviewing his own case has a personal interest in it. Every case he or she reads is done with the hope or expectation that it applies to their situation. There's an old saying that a lawyer who represents themselves has a fool for a client. I've represented several lawyers over the years who got convicted for various things. They all recognized that even though they were lawyers, they were not competent to handle their own cases.

Chances of Success

As I said earlier, judges assume you are guilty and everything was done properly. You have to understand that when evaluating a case. Without looking at anything I can tell someone they don't have a case and be right 95% of the time. Although the odds are stacked against you, there are a few situations where the odds may be better than average. While every case is different, I'll set forth some of those situations. Keep in mind that this is in no way an exhaustive list, and there may be other situations where a valid claim can be made.

The most important factor is the strength of state's case. The court assumes you are guilty, and for the most part the court is not concerned with whether you are guilty or not. However, the strength of evidence is a factor that is looked at in a number of situations. If the evidence is overwhelming and you are clearly guilty you probably aren't going to get relief, even if you have a serious constitutional violation. All errors are evaluated in terms of their impact on the case. In other words, you have to do more than establish a constitutional violation. You have to prove it made a difference in the case.

Guilty pleas

Where you plead guilty you are almost never going to be able to make a successful claim. When you plead guilty the court assumes you are guilty. You have to prove something happened that caused you to plead guilty. The most common claim is that you didn't understand what you were doing; that claim is almost never successful. You have to answer a number of questions when you plead guilty and the court is going to assume you answered those truthfully, and knew what you were doing.

Sometimes a defendant is given the wrong information. The most common is bad information about sentencing. For instance, if you are told the offense is a third degree felony and it's really a first degree felony, you may have a claim. These claims are extremely rare, and generally only successful when the judge is involved; you have to be given the wrong information by your lawyer, and the information is confirmed by the judge. As you can imagine, that rarely happens.

Another claim is that you didn't understand the elements of the offense, or were not aware of a defense that was available. That claim is extremely difficult to establish; generally your word is not going to be enough. Most of the time the judge is going to accept the lawyer's explanation. If they say they explained the law that is probably going to be enough.

Another common claim in guilty pleas is that the lawyer did not properly prepare, or investigate the case. As with most ineffective assistance claims, it is almost never successful. To establish such a claim you have to prove what the lawyer would have found if they had investigated. That usually means you have to conduct your own investigation. While that is difficult enough to do, you still have to do more – you have to establish that you wouldn't have pled guilty if you had all the information. That generally means the information must be significant, and be something that most people would rely on. Most claims are generally rejected for this reason.

Although rare, occasionally you are able to discover information that the prosecutor should have told you about before entering your plea. You must prove that the information was disclosed, and that you did not know about it. Again, you must establish that you would not have pled guilty if the information had been disclosed.

Ineffective assistance

Before talking about cases that went to trial, there are a couple of things you must be aware of. First, you need to recognize that ineffective assistance of counsel claims are almost never successful. Even though the chances of success are so small, it is still the most common claim raised in writ applications. The reason why the claim is so rarely successful lies in the law of ineffective assistance. Contrary to what you expect (or want) you are not entitled to the best possible representation; you are entitled to a competent lawyer. Competent in this context basically means average. That means courts don't review claims in light of the way the best lawyer

around would handle it; all lawyers make mistakes, and the fact that a lawyer makes a mistake doesn't mean they are incompetent.

Another important consideration is that courts will not second guess a lawyer's strategy decisions. Many times the courts refer to such decisions as tactical decisions. Basically, that means that if they had a reason for not doing something, the court is not going to second guess them. This often comes into play when the defendant alleges a lawyer didn't present certain evidence, or pursue a particular line of defense. As long as the lawyer can explain why they did it, the court is going to find they were competent.

The biggest hurdle you face in establishing an ineffective assistance claim is proving prejudice. It is not enough to prove the lawyer did something wrong. You have to prove that it hurt you or prejudiced. Many times courts will address this issue first. For instance, if you are arguing your lawyer didn't investigate and locate a witness, the court may find that even if they had presented the witness the result would have been the same. Again, you have to remember that you must do more than establish the lawyer screwed up in some way.

General considerations

Another important thing you have to recognize is that only certain types of claims can be raised in an application for habeas corpus. Generally, you must have some type of constitutional issue. The issue must be one that has not been addressed. I can't begin to estimate the number of petitions I have seen where the defendant is complaining about a ruling on some legal issue that was raised on appeal

It is helpful to understand what cannot be raised. Generally, issues regarding the admissibility of evidence cannot be raised. The same is true for violations of rules such as the Code of Criminal Procedure, or the Rules of Evidence.

It is also important to recognize that habeas is not a substitute for appeal. That means two different things. One is that issues raised on appeal cannot be raised again in a writ for habeas corpus. You probably believe the Court didn't decide your case correctly, or didn't properly address the issues, but you do not get a second shot in a habeas application. Courts routinely reject those type of claims, without ever addressing them. I recognize its hard to give up on something, but no matter how wrong you think the court was you aren't going to get them to reconsider.

The second thing this means is that you cannot raise an issue that could have been raised on direct appeal. For example, if you have an issue regarding an arrest or search that was not raised in the appeal you cannot raise it in habeas. The only option you have for that type of issue is to establish your appellate lawyer was ineffective for not raising the issue. Of course, you still face the problems with ineffective assistance claims.

One of the biggest obstacles you face in habeas corpus is the doctrine of procedural default. The rule is that courts must be given an opportunity to rule on claims when they first arise. Usually that means you have to object or file a motion at the first opportunity. If you don't, the issue is considered waived. Again, the only option is to prove the failure to raise the claim earlier was the result of ineffective assistance.

What can you pursue

So where does all this leave you. Generally, if you are basing your complaint on the record – i.e. something that happened at trial – you are going to lose. Whenever you hear someone talking about errors in the record you should be suspicious. There are very few habeas claims that are apparent from the record. That means that you need additional evidence – something that has not already been addressed by the court.

What type of evidence you present depends on the issue. If you believe evidence was not presented, or perhaps was not disclosed, you need to establish what that evidence was. That generally means an affidavit, or the actual evidence. Unless you have something additional to present to the court, the odds are against you.

Many people think that if you look hard enough – or pay a lawyer enough money – you can get a case reversed. Nothing could be farther from the truth. Even the best lawyer cannot create something out of thin air. The fact is that for most cases there is nothing anyone can do. Is that fair – of course not. There are people in prison who shouldn't be there for any number of reasons. Unfortunately, the fact is that for many people there is nothing you can do.

That doesn't mean there are not some legitimate claims because there are. They are few and far between though. If you have something new to present to the court – that is important to the case – you may have a chance. Realize that even with that however, the odds are against you.

Conclusion

Hopefully this gives you some insight into your own case, and what it takes to make a successful claim. There is doubt that you will find someone who believes you have a claim. Be wary of who you take advice from though – there are always those who prey on those in desperate situations. If someone tells you they can win your case even before they look at it they are trying to take advantage you. If someone looks at your case and guarantees you they can win, you should also be wary. Someone who knows what they are doing will never make such a guarantee – at best they may tell you have an issue to present, and you have a chance. That is the most anyone can guarantee.

In the end, the fact is that you may be better off spending your money and concentrating on getting out at the earliest opportunity through parole.

Good luck.

Disclaimer

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Prepared and furnished by:

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