1968

Statutes: An Analysis of the Minnesota Post Conviction Remedy Statute

Minn. L. Rev. Editorial Board

Follow this and additional works at: https://scholarship.law.umn.edu/mlr

Part of the Law Commons

Recommended Citation
https://scholarship.law.umn.edu/mlr/2896

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.
pear to be irrelevant to the constitutional issue involved.

Notwithstanding the tenable policy reasons for a reluctance to exercise jurisdiction over out-of-state buyers where there has been no physical entry into the state by the defendant, the statute in question is clear and unequivocal. It declares that any foreign corporation which makes a contract with a resident of Minnesota to be performed in whole or in part in Minnesota should be subject to the jurisdiction of our state courts. While it is unquestionably proper for the court to consider the constitutionality of any application of the statute, it would seem that there is little room for it to indulge in its conception of good public policy since that question has already been resolved by the legislature.

Marshall Egg presented the Minnesota Supreme Court with an excellent opportunity to define the constitutional limits of extraterritorial jurisdiction over foreign corporations. It is unfortunate that the opinion perpetuates the confusion and uncertainty which have existed in this area. Perhaps the new, more general jurisdiction statute will give the court an opportunity to reconsider its position.

Statutes: An Analysis of the Minnesota Post Conviction Remedy Statute

In response to encouragement from the federal government, the Minnesota legislature recently enacted a Post Conviction Remedy Statute.

---

47. For example, the state does not want to discourage nonresidents from making purchases. See Fourth Northwestern Nat'l Bank v. Hilson Indus., 264 Minn. 110, 117-18, 117 N.W.2d 732, 736 (1962). It should be noted, however, that while the possibility of subjecting itself to the jurisdiction of the state of the seller might deter the casual purchaser, it is highly doubtful that it would have such an effect on a corporation doing substantial business with the seller. The very fact that a corporation continues to make purchases in the state is a positive indication that it finds some economic advantage in such action.

1. Minutes of the meeting of the Minnesota Senate Committee on Judiciary, March 2, 1967, in MINN. S. COMM. ON JUDICIARY 15 (1967). The encouragement was in the form of an amendment to the federal Habeas Corpus Act which ensured a degree of finality to state court findings of fact in criminal proceedings. 28 U.S.C. §§ 2241-55 (1964), as amended, (Supp. II, 1966). It was hoped that the amendment would encourage states to enact post-conviction legislation by assuring the state that such a remedy would be accorded a presumption of adequacy by the federal courts. See S. REP. No. 1797, 89th Cong., 2d Sess. 2 (1966). See also Case v. Nebraska, 381 U.S. 336 (1965), which made this encouragement explicit.
statute. The statute establishes a procedure whereby a criminal may seek to overturn his conviction on the grounds that the conviction or his sentence violated rights guaranteed to him by the constitution or laws of either the United States or Minnesota. In order to initiate proceedings under this statute, the criminal defendant must file a petition with the clerk of the district court in which his conviction took place. If the applicant is without counsel, the clerk of the district court must send a copy of the petition to the office of the public defender. If the petitioner is indigent and does not waive his right to counsel the public defender prepares a post-conviction petition and serves it upon the Attorney General or the local county attorney. The county attorney or the Attorney General has twenty days in which to respond to the petition. Thereafter an evidentiary hearing on the allegations of the petition is scheduled unless the petition, records, and files conclusively show that the petitioner is not entitled to relief.

Prior to the adoption of the Post Conviction Remedy, Minnesota afforded convicted defendants relief by means of a writ of habeas corpus. At least two major problems arose under this procedure. First, the grant or denial of an evidentiary hearing was discretionary with the trial judge, which led to inconsistencies in decisions involving summary disposition of cases.

3. Id. § 590.01(1).
4. Id.
5. Id. § 590.02(1)(4). The purpose of this procedure is to implement § 590.05 which guarantees representation by counsel to indigents. Id. § 590.02(3). All defendants may waive their right to counsel.
8. Id. § 590.04.
10. State ex rel. Owens v. Tahash, 274 Minn. 201, 143 N.W.2d 161 (1966). In State ex rel. Roy v. Tahash, 152 N.W.2d 301 (Minn. 1967), the court adopted the federal test for granting an evidentiary hearing: such a hearing must be granted if material facts which have not been determined by the trial court are in dispute and which, if proved, would entitle the petitioner to relief. The petition in Roy was filed prior to the effective date of Minn. Stat. §§ 590.01-.06 but after its adoption by the legislature. Therefore, Roy should not be considered part of the decisional law antedating §§ 590.01-.06. Rather, it must be read as a preview interpretation of this statute. This is supported by the fact that the court, in its syllabus, indicates that the standards it established for habeas proceedings are applicable to the new law.
such a petition. Second, state court findings of fact were subject to federal review, causing a loss of finality and an imbalance between state and federal courts. This federal review took place pursuant to the federal Habeas Corpus Act which made post-conviction relief available in the federal courts even to prisoners convicted under state law. In Fay v. Noia, the Supreme Court held that a federal judge sitting in a habeas proceeding was empowered to retry issues of fact already determined by the convicting state tribunal. In Townsend v. Sain, it held that the judge was under a mandate to do so if it appeared that the petitioner had been denied a fair hearing. The availability of a second forum, brought about by Noia and Sain, probably caused the substantial increase in number of applications for relief under section 2254 of the Federal Act. In 1966 Congress, desiring to reduce the number of petitions filed and


14. Id. § 2254.

15. 372 U.S. 391 (1963). Although Mr. Justice Brennan took pains to lay a historical background for Noia pointing out that the federal courts already possessed the power to review testimony previously considered by state courts, facts, both in the record and determined at trial, historically, could not be controverted in a habeas proceeding. See Fay v. Noia, 372 U.S. 391, 448 (Harlan, J., dissenting). See generally Oaks, Legal History in the High Court Habeas Corpus, 64 Minn. L. Rev. 451, 452-56, 459-68 (1965).

16. Townsend v. Sain, 372 U.S. 293 (1963). The Townsend Court delineated six standards concerning when the federal court must grant an evidentiary hearing:

1. the merits of the factual dispute were not resolved in the state hearing;
2. the state factual determination is not fairly supported by the record as a whole;
3. the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing;
4. there is a substantial allegation of newly discovered evidence;
5. the material facts were not adequately developed at the state-court hearing; or
6. for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing.

Id. at 313.

17. In 1963, 1,692 applications were filed. In 1964, 3,248; in 1965, 4,845; and in the first nine months of 1966, 3,773 applications were filed. S. REP. No. 1797, 89th Cong., 2d Sess. 1 (1966).

18. Id. at 2.
to return a degree of finality to state court proceedings by encouraging the formulation of state post-conviction remedies, amended the Federal Act. The amendment of section 2254 provides, inter alia, that the applicant must exhaust all state remedies before making application under that section. Furthermore, state court findings of fact are to be accorded a presumption of correctness in federal habeas proceedings. In response to this encouragement and the problems experienced under previous procedures, the Minnesota Post Conviction Remedy was enacted.

The Minnesota statute, following the Uniform Act, guarantees assistance of counsel to indigents at collateral attack proceedings. The statutory procedures designed to safeguard the right to counsel constitute the most significant contribution of the Minnesota Act. The petition for relief must contain the name and address of any attorney representing the petitioner. If the petitioner is without counsel and has not waived his right thereto, the clerk must submit a copy of the petition to the office of the public defender who will examine the petition, investigate the allegations therein, and, if necessary, redraft it before it is delivered to the county attorney and the chief judge for docketing. This process encourages communication between the prosecution and the public defender to help eliminate the waste of time and money created by unnecessary docketing of nonmeritorious claims; it thus facilitates prompt disposition of meritorious claims. In this way the Minnesota Post Conviction Remedy, more than any other existing system of post-conviction relief, provides effective aid to petitioners without needless expense.

19. Id. at 2. See also id. at 10.
20. Id. at 10.
21. Federal Act § 2254(c).
22. Federal Act § 2254(d).
23. See notes 11–16 supra and accompanying text.
26. Id. § 590.02(4).
27. Although the statute provides that the clerk shall submit the petition to the public defender in all cases in which the petitioner is not represented by counsel or has not waived his right to representation, presumably the public defender will proceed only in those cases in which the petitioner is indigent.
29. ABA, Committee on Sentencing and Review—Standards Relating to Post-Conviction Remedies § 4.4, at 68 (1967) [herein-
While the Minnesota Act substantially improves the quality of post-conviction review in Minnesota courts, a few major shortcomings are noticeable. The most evident defect is the Act's failure to specifically provide discovery devices. At the present time only two states have complete systems of post-conviction criminal discovery, although limited discovery is available in others. After examining the experiences of these states and those of the states without discovery, the American Bar Association recommended that a system of post-conviction discovery be developed. While relying substantially on the ABA proposal, the draftsmen of the Minnesota Act failed to make explicit their intentions with regard to the availability of discovery techniques.

The need for some system of discovery is twofold. First, the applicant is seriously hampered in the preparation and prosecution of his claim. Like proceedings under rules of civil procedure, proceedings under the Minnesota Post Conviction Remedy will normally contain only one pleading by each party. With this minimal pleading requirement it can be seen that, as in civil proceedings, discovery becomes a basic, invaluable tool.

after cited as ABA Standards]. The ABA proposals do not advocate the appointment of counsel in all cases, primarily because of the high cost to the state in terms of personnel. The cost may not seem so high, however, when one considers the time saved in court docketing brought about by cooperation between the public defender and the courts.

31. See statutes cited note 25 supra.
32. ABA Standards § 4.5, at 67.
33. Minn. R. Civ. P. 7.01 states that there shall be a complaint and an answer, a reply to a counterclaim, an answer to a cross-claim, a third-party complaint if permissible and a third-party answer. Thus, in a two-party action there will be two or possibly three pleadings. No other pleadings are allowed unless the court so orders.
34. Minn. Stat. § 590.03; ch. 336, § 3, [1967] Minn. Laws 367, provides that the petition and an answer to the petition are the only pleadings necessary unless the court shall so order.
35. The argument might be made that unlike civil complaints, the petition must allege the facts on which the claim for relief is grounded. Id. § 590.021. This significant distinction might rebut the conclusion that discovery devices are necessary for preparation for a hearing. However, § 590.021 might be interpreted to mean that the petitioner operates under a conclusion-pleading system much like that of civil procedure since petition is the only fact pleading. The response, which may be in the form of an answer or motion, may disclose none of the factual bases or theories upon which the prosecutor will rest his case.
in the attorney's preparation for trial.\textsuperscript{36} This is especially true in a post-conviction situation where many of the facts are within the peculiar knowledge of the law enforcement agencies, and where many of the key witnesses were called by the state.

Second, there is a need for a method of summarily disposing of many petitions.\textsuperscript{37} Some applications are filed merely to gain a temporary release.\textsuperscript{38} Others request relief on invalid grounds.\textsuperscript{39} While the Minnesota statute solves these problems in part,\textsuperscript{40} the need for quickly disposing of many petitions provides further justification for the incorporation of discovery devices. A concern over the clogging of the federal courts with habeas petitions was one of the reasons for the recent amendment of the Federal Act.\textsuperscript{41} A similar clogging may well occur in Minnesota if most petitions are allowed to proceed to the hearing stage.\textsuperscript{42} The incorporation of discovery into the Minnesota statute would facilitate disposition of many applications either by motion\textsuperscript{43} or by cooperation between the court, the prosecution, and the petitioner.\textsuperscript{44}

36. The state, having the majority of the evidence as well as the vast resources of its law enforcement agencies, clearly has an advantage. To remedy this situation some writers have suggested the civil discovery devices be incorporated in criminal procedure. Fletcher, Pretrial Discovery in State Criminal Cases, 12 Stan. L. Rev. 293 (1960); Goldstein, The State and the Accused: Balance of Advantage in Criminal Procedure, 69 Yale L.J. 1149 (1960); Louisell, Criminal Discovery: Dilemma Real or Apparent?, 49 Calif. L. Rev. 56 (1961).

37. Section 590.03 provides that the response by the county attorney may be in the form of a motion. Presumably, this provision contemplates a motion similar to a motion for summary judgment. Minn. R. Civ. P. 56 (summary judgment) operates on the assumption that a great deal of factual evidence will have been made available at the time of this motion, by discovery. The judgment on this motion is to be rendered on “the pleadings, depositions, . . . admissions on file . . . [and] affidavits.”

38. See Baker v. United States, 287 F.2d 5 (9th Cir. 1961); Carvell v. United States, 173 F.2d 348 (4th Cir. 1949).

39. ABA Standards \S 4.2, at 58 (commentary).

40. Section 590.04(3) states that if the petition presents only issues of law, it is within the discretion of the judge to order the applicant's appearance. However, if the petition raises issues of fact, the petitioner must be present at the hearing on these issues. Section 590.04(1) provides that if the petition, files, and records conclusively show that the petitioner is not entitled to relief, the application may be dismissed without further proceeding.

41. See note 17 supra and accompanying text.

42. It appears that the large number of petitions currently filed will continue to increase. Letter from C. Paul Jones, Minnesota Public Defender, to Minnesota District Court Judges, Aug. 14, 1967.

43. See note 40 supra.

44. \S 590.02(1)(4). See notes 26-29 supra and accompanying text.
The language of the statute suggests that at least some discovery devices will be available. Section 590.04(3) states that "In the discretion of the court it may receive evidence in the form of affidavit, deposition, or oral testimony. . . ." The admissibility of depositions as evidence indicates that at least limited discovery was contemplated. The draftsmen of the ABA standards have interpreted identical language in the statutes of three other states as providing for limited discovery. The Minnesota statute might well be similarly interpreted. Moreover, the needs discussed above support the incorporation of all the civil discovery procedures.

Three considerations are likely to become significant when the Minnesota court is faced with a determination of whether discovery is available under the Minnesota Post Conviction Remedy: (1) prior judicial interpretation of section 2246 of the Federal Act concluding discovery was not available, (2) the possible abuse of the discovery processes by in-prison petitioners, and (3) the absence of available discovery devices under the common law procedures of post-conviction relief.

Section 2246 of the Federal Act is similar to section 590.04(3) of the Minnesota Act. In Sullivan v. United States, a federal court, construing section 2246, held that civil discovery rules did not apply to habeas corpus proceedings and that only

With the availability of discovery, each party will be better prepared to present his claim and thereby eliminate the necessity of a further proceeding in a greater number of situations. The reduction of hearings will benefit the state by reducing expenditure of time, money, and manpower, while simultaneously benefiting the criminal who has a meritorious claim.

45. ABA STANDARDS § 4.5, at 70 (commentary), interpreting ILL. ANN. STAT. ch. 38, § 122-6 (1964); N.C. GEN. STAT. § 15-221 (1965); ORE. REV. STAT. § 138.620 (2) (1963).

46. The draftsmen of the Minnesota Act may have assumed that a petition requesting post-conviction relief was civil in nature, and that, therefore, the civil devices would be available. Conference with C. Paul Jones, Minnesota Public Defender and Joseph Livermore, Associate Professor of Law, U. of Minn., September 15, 1967, two of the draftsmen of the Minnesota Post Conviction Remedies Statute.

47. FEDERAL ACT § 2246 reads as follows:

On application for a writ of habeas corpus, evidence may be taken orally or by deposition, or, in the discretion of the judge, by affidavit. If affidavits are admitted any party shall have the right to propound written interrogatories to the affiants, or to file answering affidavits.

MINN. STAT. § 590.04(3) states that, "In the discretion of the court it may receive evidence in the form of affidavit, deposition, or oral testimony."


49. But see United States ex rel. Seals v. Wiman, 304 F.2d 53 (5th Cir. 1962); Sullivan v. Dickson, 263 F.2d 725 (9th Cir. 1960).
the discovery methods explicitly provided were available. This was a very narrow interpretation of the section in view of Rule 81 of the Federal Rules of Civil Procedure, which provides that those rules do not apply to habeas corpus proceedings except to the extent that practice is not set forth in the statutes of the United States. Since the Minnesota law makes no provision for the use of depositions after the admission of affidavits,⁵⁰ the Sullivan interpretation of section 2246 should not influence the Minnesota court.

The possibility of abuse of the discovery procedure⁵¹ should not discourage the incorporation of civil discovery techniques. If the civil discovery devices are made available no greater problems of abuse should be encountered than those presented in civil proceedings. Since discovery could not be initiated within twenty days of the filing of his petition,⁵² the applicant will generally be represented by counsel⁵³ before discovery is available. In the few cases in which the petitioner waives his right to counsel,⁵⁴ abuse could be controlled by Minnesota Rule 30.02 which provides that the court may make any order justice requires for the protection of the parties, including an order that discovery not be made. If only limited discovery were made available as in those cases where the court has granted permission,⁵⁵ the problem would be negated.⁵⁶

The final argument which might be made against the incorporation of discovery is that Minnesota has no common law precedent for the use of discovery in post-conviction proceedings.⁵⁷

⁵⁰. See note 47 supra.
⁵². Minn. R. Civ. P. 26.01.
⁵³. The applicant ordinarily will be represented either by private counsel or by the public defender. See notes 30–33 supra and accompanying text.
⁵⁴. See Minn. Stat. § 590.02(3); ch. 336, § 2(3), [1967] Minn. Laws 367.
⁵⁵. See ABA Standards § 4.5, at 71 (commentary).
⁵⁶. ABA Standards § 4.5 suggests a fourth problem not dealt with in this Comment, i.e., the constitutional limitations upon discovery directed at the applicant. However, it is pointed out that since the prisoner is the moving party, some of the problems of compulsory self-incrimination are removed. Under a limited system of discovery, further constitutional problems might be avoided before permission to take the applicant's deposition was granted. If the full panoply of civil discovery were made available, constitutional problems might be raised on hearing of a motion made under Minn. R. Civ. P. 30.02.
⁵⁷. See, e.g., Minn. R. Civ. P. 81.01, which provides that proceedings in which a writ of habeas corpus is sought shall be exempted from the rules of civil procedure in so far as habeas proceedings are inconsistent
This, however, is not tenable, for the Post Conviction Remedy specifically provides that it is to supersede all other remedies; it is an exclusive method of relief. Moreover, being remedial, it should be liberally construed to best satisfy the needs giving rise to its adoption. If these needs are to be satisfied, section 590.04(3) should be interpreted to make discovery devices available.

A second major shortcoming of the Act is its failure to clearly indicate the quantum of proof which the petitioners must provide before courts must grant relief. Section 590.04(3), which codifies previous habeas corpus requirements, provides that “[U]nless otherwise ordered by the court the burden of proof of the facts alleged in the petition shall be upon the petitioner to establish such facts by a fair preponderance of the evidence.” This language must be interpreted with due consideration given to the fact that at some point the factual determinations of the state courts may be subjected to review by federal courts, thereby defeating a major purpose of the post-conviction remedy. Subject to this limitation, however, it seems clear from this provision that a court in its discretion may change the amount of proof necessary for petitioner to gain relief, even to the extent of placing upon the state the burden to show why he should be denied relief.

The burden and quantum of proof in a given case arising under the Minnesota Post Conviction Remedy should be a function of the substantive law governing the allegations of the petition. If the petitioner alleges that his confession was involuntarily obtained, it would seem that the evidence presented must show, to a “moral certainty,” that the confession was voluntary. If the petition alleges that there was discrimination or in conflict with the procedure provided by the civil rules.

58. MInN. STAT. § 590.01 (2); ch. 336, § 1(2), [1967] Minn. Laws 367.
59. See notes 11-16 & 33-44 supra and accompanying text.
60. E.g., State ex rel. Harris v. Tahash, 353 F.2d 119 (8th Cir. 1965).
61. In Townsend v. Sain, 372 U.S. 293, 316 (1963), the Court stated, “If the state trial judge has made serious procedural errors... in such things as the burden of proof, a federal hearing is required.” Arguably, a similar error made in a post-conviction hearing would render the procedure inadequate and the absence of a full and fair hearing would eliminate the presumption of correctness. See note 22 supra and accompanying text.
62. See notes 18-23 supra and accompanying text.
63. See ABA STANDARDS § 4.6, at 73 (commentary).
64. See Jackson v. Denno, 378 U.S. 368 (1964), requiring that a pre-trial hearing be conducted on the voluntariness issue. At that hearing the trial judge must make a “reliable determination” of the
nation in the selection of the jury, it should fall upon the petitioner to establish at least a prima facie case of discrimination. The reasons behind the allocation of the burden at the original trial seem equally compelling in a post-conviction hearing on allegations not previously determined.

However, a counterargument exists. Since the post-conviction hearing will generally take place long after the original trial, evidence will often be difficult to ascertain. Thus, if the allocation of the burden of proof at the post-conviction hearing is to remain as it rested at the trial, many petitioners who were properly convicted may be freed merely because the state cannot now, as it had at that time, produce sufficient evidence to meet its burden of proof. In those cases the burden must be

issue. The Minnesota court has held that when a hearing is granted through a post-conviction proceeding -the evidence must satisfy the trial judge to “a moral certainty or beyond a reasonable doubt that the confession was voluntarily given.” State v. Keiser, 274 Minn. 265, 270, 143 N.W.2d 75, 79 (1966).

65. See Swain v. Alabama, 380 U.S. 202 (1965), and Whitus v. Georgia, 385 U.S. 545 (1967), indicating that the defendant (petitioner) must establish a prima facie case before it falls to the state merely to rebut that allegation.

66. For example, the state must establish the guilt of an indicted criminal beyond a reasonable doubt because the quantum and burden of proof ought to be commensurate with the sanction imposed. State v. Keiser, 274 Minn. 265, 143 N.W.2d 75 (1965). This reasoning applies equally well when the question is whether those sanctions which have been placed upon a man ought to be continued.

67. If all prior adjudications of factual basis of the matter raised in the petition are given a res judicata effect with respect to the petition only those matters not previously determined and those allegations based upon new grounds will remain for the consideration of the post-conviction court. See note 72 infra and accompanying text.

68. The situation which New York now faces in the area of involuntary confessions illustrates this problem. Jackson v. Denno, 378 U.S. 368 (1964), held unconstitutional New York procedures used to determine whether a confession was voluntarily obtained. In People v. Huntley, 15 N.Y.2d 72, 204 N.E.2d 179, 255 N.Y.S.2d 888 (1965), the New York Court of Appeals held that petitioners are entitled to a habeas hearing if the Denno standard was not complied with at trial. In People v. Leonti, 18 N.Y.2d 384, 222 N.E.2d 591, 275 N.Y.S.2d 825 (1966), it was held that at such a hearing, the state must prove beyond a reasonable doubt that the confession was voluntary. Thus, if a defendant convicted in 1945 were to challenge his conviction today on the grounds that his confession was involuntarily obtained, the state would face an insurmountable obstacle. Many witnesses may have died and the memory of many others would be clouded, and in many circumstances no record would be available to refresh those memories. To require the state to prove beyond a reasonable doubt that the confession was voluntary would virtually insure that the defendant would be entitled to go free. This argument may, however, be tempered as the constitutional rights of criminals become more settled.
shifted to the petitioner.\textsuperscript{69} This is not unfair. The wording of the statute\textsuperscript{70} does not induce petitioner to believe that the burden will not be so shifted. Thus, the ambiguity of section 590.04(3) can be used both to pursue the interest of consistency in the majority of cases and to allow the subrogation of that interest to the practical considerations of the administration of justice in other cases.

The Minnesota Post Conviction Remedy is an adequate response to the federal government's admonitions to the states to formulate an orderly system of post-conviction relief. Assistance of counsel is ensured to all petitioners. The high degree of cooperation between petitioner's counsel and the court contemplated by the system should serve the ends of justice. Assuming that the res judicata effect presently ascribed to prior petitions\textsuperscript{71} is extended to include all prior adjudications of a given issue,\textsuperscript{72} greater time will be made available for consideration of the more meritorious claims. In the end, however, the effectiveness of the Act will be determined by the interpretation given

\begin{itemize}
\item 69. It is submitted that the most obvious alternative—i.e., a timeliness doctrine—would not resolve the problem. A doctrine such as this is based on the notion that the defendant must bring his action within a reasonable time from the date of the availability of the alleged grounds. If the Supreme Court were to decide twenty years after a conviction that some procedure violated the defendant's constitutional rights, the defendant might file his petition twenty-one years from the date of his conviction and presumably not have violated the timeliness doctrine. However, the twenty-one year old evidence would be nonetheless stale.

\item 70. "Unless otherwise ordered by the court the burden of proof of the facts alleged in the petition shall be upon the petitioner to establish such facts by a preponderance of the evidence." \textsc{Minn. Stat.} § 590.04(3).

\item 71. Federal experience conclusively indicates there will be few claims worthy of consideration. Of 4,845 habeas petitions filed in 1965, 98\% of these were without merit. \textsc{S. Rep. No. 1797, 89th Cong., 2d Sess.} 1 (1966).

\item 72. The Supreme Court has recognized the sufficiency of an evidentiary hearing conducted by the convicting court in the course of the original trial. \textit{Townsend v. Sain}, 372 U.S. 293 (1963) (dicta). The Minnesota court has made a similar statement. \textit{State ex rel. Roy v. Tahash}, 152 N.W.2d 301 (Minn. 1967). Inasmuch as \textit{Roy} may be viewed as a preview to the Minnesota court's interpretation of the Post Conviction Remedy, see note 10 \textit{supra}, the statement takes on added significance.

Under the Federal Act any finding by a state court after a full and fair hearing is presumed correct and is accepted as final by the federal courts unless the applicant can prove that the state determination failed to provide a full and fair hearing on his claim. See \textsc{28 U.S.C.} § 2254(d) (1965), \textit{as amended}, (Supp. II, 1966), for the full text of what the state prisoner must specifically prove in a federal habeas proceed-