

CASES ADJUDGED
IN THE
SUPREME COURT OF THE UNITED STATES
AT
OCTOBER TERM, 1943.

EX PARTE ABERNATHY.

NO. —. ON MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF HABEAS CORPUS.*

Decided October 18, 1943.

1. The exercise by this Court of the power conferred upon it to issue writs of habeas corpus (28 U. S. C. §§ 377, 451) in aid of its appellate jurisdiction is discretionary; and, save in exceptional circumstances, the Court does not exercise the power where an adequate remedy may be had in a lower federal court or where, if the relief sought is from a judgment of a state court, the petitioner has not exhausted his remedies in the state courts. P. 219.
 2. Refusal of the writ, without more, is not an adjudication on the merits and is to be taken as without prejudice to an application to any other court for the relief sought. P. 220.
- Applications denied.

PER CURIAM.

The applications are severally denied.

In these cases petitioners invoke the exercise of the jurisdiction conferred on this Court by 28 U. S. C. §§ 377,

* Together with No. —, *Ex parte Dexter C. Dayton*; No. —, *Ex parte Frederick T. Hansen and Sam Bonjiorno*; No. —, *Ex parte Floyd J. Kesling*; No. —, *Ex parte Louis Burall*; No. —, *Ex parte Oliver Gobin*; No. —, *Ex parte Peter J. C. Donnelly*; No. —, *Ex parte Alfred Maurice*; No. —, *Ex parte Sol Goldsmith*; No. —, *Ex parte Paul Davis*; No. —, *Ex parte Robert Hutto*; No. —, *Ex parte Alfred Friters*; No. —, *Ex parte Wilfred Doza*; No. —, *Ex parte R. J. Hughes*; and No. —, *Ex parte John Russell Miller*, also on motions for leave to file petitions for writs of habeas corpus.

451, to issue writs of habeas corpus in aid of its appellate jurisdiction. Cf. *Ex parte Peru*, 318 U. S. 578, 582-3. That jurisdiction is discretionary, *id.* 584; *Bowen v. Johnston*, 306 U. S. 19, 27, and this Court does not, save in exceptional circumstances, exercise it in cases where an adequate remedy may be had in a lower federal court, *Ex parte Current*, 314 U. S. 578; *Ex parte Spaulding*, 317 U. S. 593; *Ex parte Hawk*, 318 U. S. 746, or, if the relief sought is from the judgment of a state court, where the petitioner has not exhausted his remedies in the state courts, *Mooney v. Holohan*, 294 U. S. 103, 115; *Ex parte Botwinski*, 314 U. S. 586; *Ex parte Davis*, 317 U. S. 592, 318 U. S. 412; *Ex parte Williams*, 317 U. S. 604. Refusal of the writ, without more, is not an adjudication on the merits and is to be taken as without prejudice to an application to any other court for the relief sought.

UNITED STATES EX REL. McCANN *v.* ADAMS,
WARDEN, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT.

No. 371. Decided November 8, 1943.

The petition to the District Court for a writ of habeas corpus adequately raised the issue, not previously adjudicated, whether, in a prosecution in the District Court which resulted in a judgment of conviction, the petitioner had intelligently—with full knowledge of his rights and capacity to understand them—waived his right to the assistance of counsel and to trial by jury; and, in the circumstances, the petitioner was entitled to an opportunity to establish his claim. P. 221.

136 F. 2d 680, reversed.

PETITION for a writ of certiorari to review the affirmance of an order denying an application for a writ of habeas corpus.

Gene McCann, pro se.