

BUSHNELL *v.* ELLIS, CORRECTIONS DIRECTOR.

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS.

No. 561. Argued May 2, 1961.—Decided May 22, 1961.

Judgment reversed and cause remanded to Court of Criminal Appeals of Texas to grant petitioner a hearing on his petition for writ of habeas corpus.

Percy D. Williams, acting under appointment by the Court, 364 U. S. 917, argued the cause and filed a brief for petitioner.

B. H. Timmins, Jr., Assistant Attorney General of Texas, argued the cause for respondent. With him on the brief were *Will Wilson*, Attorney General, and *Linward Shivers*, Assistant Attorney General.

PER CURIAM.

The judgment of the Court of Criminal Appeals of Texas is reversed and the cause is remanded to that court with directions to grant petitioner a hearing upon his petition for a writ of habeas corpus. *Uveges v. Pennsylvania*, 335 U. S. 437; *Cash v. Culver*, 358 U. S. 633; *McNeal v. Culver*, 365 U. S. 109.

MR. JUSTICE STEWART took no part in the consideration or decision of this case.

MR. JUSTICE CLARK, with whom MR. JUSTICE FRANKFURTER and MR. JUSTICE HARLAN join, dissenting.

This application for the issuance of a writ of habeas corpus was filed as an original action in the Court of Criminal Appeals of Texas. Neither the record, the briefs, nor argument of counsel indicates that such an action has ever been filed in a District Court of Texas as appears to be required by Texas procedure. See *Ex parte Rod-*

366 U. S.

May 22, 1961.

riguez, 169 Tex. Cr. R. —, 334 S. W. 2d 294 (1960); *Ex parte Fitzpatrick*, 167 Tex. Cr. R. 376, 320 S. W. 2d 683 (1959); *Ex parte Brooks*, 85 Tex. Cr. R. 397, 212 S. W. 956 (1919). The judgment of the Court of Criminal Appeals might, therefore, have been based upon an independent state ground. In this condition of the record, I would affirm the judgment without prejudice to the petitioner's filing in any appropriate Texas District Court an application for a writ of habeas corpus to test out the validity of his detention. See Vernon's Tex. Code Crim. Proc., Art. 119.

HERRIN TRANSPORTATION CO. *v.* UNITED STATES ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS.

No. 837. Decided May 22, 1961.

186 F. Supp. 777, affirmed.

Carl L. Phinney for appellant.

Solicitor General Cox, *Assistant Attorney General Loevinger*, *Richard A. Solomon*, *Robert W. Ginnane* and *James Y. Piper* for the United States, and *Ewell H. Muse, Jr.* for Strickland Transportation Co., appellees.

PER CURIAM.

The motions to affirm are granted and the judgment is affirmed.