

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.

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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.