

U.S. judges say California's top court is jeopardizing constitutional rights

by Maura Dolan

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Two federal judges warned Monday that the California Supreme Court's practice in certain criminal cases was jeopardizing citizens' constitutional rights.

U.S. 9th Circuit Court of Appeals Judges Jay S. Bybee, a George W. Bush appointee, and Stephen Reinhardt, who was elevated to the court by President Carter, expressed their frustrations in a ruling that will allow a state prisoner to challenge his detention in federal court.

The case dealt with legal deadlines, and the 11-judge appellate panel found itself having to surmise why the California Supreme Court had rejected the habeas corpus filing — the legal means by which inmates can win their freedom.

Bybee complained that communication between the two courts “has devolved into a series of hints that the California Supreme Court obliquely telegraphs and that we struggle to decipher.”

Yet the 9th Circuit's difficulties “pale in comparison to the costs that the California Supreme Court's imprecision imposes on its own citizens and state government, because they have no more clue what the California Supreme Court means than we do,” Bybee said.

Overwhelmed by thousands of challenges from inmates each year, the state Supreme Court decides most of them with one-paragraph summary rulings that frustrate federal judges who later are asked to review them.

In Monday's case, the 9th Circuit was examining the California high court's rejection of a challenge by Freddy Curiel, who was sentenced to life without parole for murder. If the state court had found the rejection was due to a missed legal deadline, the federal judges would have to dismiss the inmate's challenge.

The 2010 order said in its entirety: “The petition for writ of habeas corpus is denied. (See *In re Swain* (1949) 34 Cal.2d 300, 304; *People v. Duvall* (1995) 9 Cal.4th 464, 474.)”

Ninth Circuit Judge Mary H. Murguia, who wrote Monday's majority opinion, said the appellate court had determined that the state justices did not find Curiel's challenge untimely because neither of the two cases they cited had to do with deadlines.

Reinhardt said in his concurrence that he understood the California high court was overwhelmed with work and strained financially and could not write full-blown rulings on every case. But he implored the court to provide more elucidation and suggested specific reforms.

“Perhaps what was not so long ago the most innovative court in the nation will once again be able to provide national leadership when it considers the problem of the untold numbers of habeas petitions raising substantial claims of federal constitutional violations,” he wrote.

“Without a new approach,” he said, “even clearly erroneous constitutional decisions of state courts will remain uncorrected and leave defendants without the check on constitutional error that until recently the federal courts provided.”

Monday's complaints about the California Supreme Court's practice of denying habeas challenges — known as “postcard” denials — have been raised many times throughout the years by 9th Circuit judges.

But Reinhardt and Bybee noted that the issue was now more important than ever, because recent rulings by the U.S. Supreme Court require federal courts to defer to state judges except in extremely limited circumstances.

“Until we can tell what the California Supreme Court has decided,” Bybee wrote, “we won’t know how to afford California the deference to which it is entitled.”

He said that changes in the composition of the California court — Gov. Jerry Brown has added three appointees — “will give it the opportunity to rethink how it disposes of its summary habeas docket.”

California Chief Justice Tani Cantil-Sakauye, who was out of state on court business, could not be reached for comment Monday. Peter Allen, a state Supreme Court spokesman, declined to comment on the 9th Circuit decision. He noted, however, that “the court follows what the state Constitution mandates — to provide a ruling, not a written decision.”

Santa Clara University law professor Gerald Uelmen, an expert on the California Supreme Court, said the judges’ comments showed that the 9th Circuit was “clearly in tune to the change in the California Supreme Court and probably sees this as an opportunity to tweak the court to finally address the problem and come up with some solutions.”

Uelmen predicted the state court would adopt some of the federal judges’ suggestions.

“I think it will,” he said. “I think the new majority clearly wants to position the court as a leading state court in the nation, and this is an opportunity to show some leadership.”

Reinhardt laid blame for the problem on the new rules limiting the authority of federal judges in criminal cases.

Federal judges are less able to correct mistakes by their state counterparts, and state jurists don’t have the time or staff to fully and carefully examine every inmate challenge, he wrote.

“One can only sympathize ... with the plight of the California Supreme Court with its massive potential caseload and severely strained resources,” Reinhardt wrote.

But, Bybee said, the addition of just “a handful more words” to the state court’s orders might reduce their “inscrutability.”

Even the California attorney general’s office was “befuddled” when trying to interpret what the state court meant in Monday’s case, Bybee said. He likened the efforts to divine the California court’s decisions to the work of British mathematicians who cracked German code during World War II.

“Unless we discover a Rosetta Stone in the San Francisco Bay that helps us crack the California Supreme Court’s habeas code,” Bybee wrote, “I worry that cases like this one will reoccur with some frequency and that federal courts will be forced to trot out their best Alan Turing impressions on a regular basis.”

maura.dolan@latimes.com