

Nonhuman Rights Project (NhRP) vs. Breheny (New York Court of Appeal, 2022)

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Outline

- I. Summarization of the case
- II. Definition: Habeas corpus
- III. Legal Issue
- IV. Court's decision and reasoning
- V. Dissenting opinions
- VI. Questions for plenary discussion

I. Summarization

- Asian Elephant “Happy”
- Captured and removed from her natural habitat at 1 year old.
- Kept at Bronx Zoo (NYC) since 1977.
- No companion (solitary confinement) since 2007.
- NhRP commenced a proceeding against James Breheny in 2018, demanding **habeas corpus** to be granted to Happy

II. Habeas Corpus (= “you should have the body“)

- The Habeas Corpus Act was enacted in 1679 in England by King Charles II
- Also referred to as „Great Writ of Liberty“ in the USA / UK
- Supposed to protect persons of arbitrary or unlawful imprisonment.
- Enshrined in New York Constitution (NY Const Art I, §§4, 6)
- Implicated as a fundamental human right in german law in Art. 104 II GG
- Art. 5 EMRK: Detention review

III. Legal Issue(s)

1. Is Happy a Person?

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2. Can the detention of an elephant be cruel / antiethical to an extent where the writ of habeas corpus should be made available under common law?

IV. Court's decision and reasoning

- The Court of Appeals ruled in a 5-2 decision that habeas corpus wouldn't be granted to Happy. (p.1-17)

Reasoning:

- Elephants are not *persons* entitled to rights (pp.5, 11)
- Habeas corpus is only applicable to human beings (pp.6-10, 17)
- The living conditions and care comply with all relevant welfare laws (p.5), a writ of habeas corpus requires *illegal* confinement (p.8)
- Removing Happy from her familiar environment would cause her stress (p.5)
- Happy wouldn't be guaranteed freedom, but rather transferred to another confinement (p.10)
- Recognizing that animals have liberty interests would have serious implications for interactions between humans & animals (pp.12-13)
- "The use of habeas corpus as a vehicle to extend legal personhood beyond living humans is not a matter for the court" (p.15)

V. Dissenting opinions

- Judge Rowan Wilson and Judge Jenny Rivera dissented, agreeing legal rights should be granted to elephants, but differing in their reasoning

Judge Wilson

pp. 18-87

- Question is not, whether Happy is a person, but if her cruel detention justifies the issuance of the writ (pp. 21-25)
- Historically, the scope of habeas corpus was continually expanded. (pp. 25-50)
- Legal Personhood is irrelevant (pp. 23-34)
- Rights don't depend on the ability to bear duties (pp. 29-36)
- The writ is a vehicle for judges to balance interests in individual cases (pp. 50-87)

Judge Rivera

pp. 88-108

- Historically, habeas corpus has been adapted to society's understanding of justice. (pp. 88-93)
- Decisive criterion is autonomy, species membership is irrelevant. (pp. 92-102)
- Prior case law ruled that habeas corpus can be used to seek transfer. (p. 105)
- Humans are the reason as to why Happy cannot just be released. (p. 107-108)

Questions for plenary discussion

- Can individuals have rights without having to fulfill duties?
- Is granting legal personhood the best strategy for improving animal welfare or do better legal strategies exist.
- Which traits determine if an individual is deserving of legal rights?
- Do you agree with the court's decision? Why / Why not?
- If you're not agreeing with the court's decision, do you agree with one of the dissenting opinions?

Sources

- Court Case: https://www.mpipriv.de/2185643/new_york_court_of_appeals_usa_nonhuman_rights_project_v-_breheny_happy_.pdf
- Slide 4: <https://www.lto.de/recht/hintergruende/h/usa-rechtsgrundsatz-habeas-corpus-abschiebung-trump-regierung>