

1965

Eugene Myers v. Leroy Hadley : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

EUGENE MYERS,
Plaintiff and Appellant,

— vs —

LEROY HADLEY, Sheriff,
Weber County,
Defendant and Respondent.

Case No. 10250

FEB 23 1967

BRIEF OF RESPONDENT

Appeal from the Judgment of the
Second District Court for Weber County
Hon. Charles G. Cowley, Judge

PHIL L. HANSEN
Attorney General

RONALD N. BOYCE
Chief Assistant Attorney General
Attorneys for Respondent

EUGENE MYERS
Pro Se
Appellant

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IN THE SUPREME COURT
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— vs —

LEROY HADLEY, Sheriff,
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Defendant and Respondent.

Case No. 10250

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The appellant Eugene Myers appeals from a decision of the District Court of the Second Judicial District, denying his petition for habeas corpus and release from custody of the respondent.

DISPOSITION IN THE COURT BELOW

The appellant filed a petition on October 9, 1964, for a writ of habeas corpus, seeking his release from the jurisdiction of the respondent where he was being held for purposes of extradition to the State of Nevada. A hearing was held on the petition on the 16th day of October, 1964, before the Honorable Charles G. Cowley. The petition was denied. No final order denying the petition was entered by the trial court.

RELIEF SOUGHT ON APPEAL

The respondent submits the appeal should be dismissed.

STATEMENT OF FACTS

On the 9th day of October, 1964, the appellant filed a petition for a writ of habeas corpus in the Second Judicial District Court, Weber County, State of Utah. The petitioner alleged that he was being held by the respondent on a fugitive warrant from the State of Nevada. He further alleged that he was not the person named in the fugitive warrant (R. 2, etc.). The petitioner's final allegation was that he was denied counsel at the time of his arrest pursuant to warrant and his presentment before the magistrate and his commitment for extradition (R. 2, etc.). At the time of the hearing on the writ of habeas corpus, Officer L. A. Jacobsen of the Ogden City Police Department testified that in his presence the appellant acknowledged that he was wanted in Las Vegas and that he was the person named in the arrest warrant, but that he could "beat the charge" on the grounds of illegal search and seizure (T. 4). The appellant himself testified and admitted being in Nevada in October, 1963, which apparently is the time that the alleged crime in Nevada was committed (T. 11). The appellant denied making the admission in the presence of Officer Jacobsen (T. 9). Mr. Philip J. Shaw of Las Vegas, Nevada, identified the appellant as being in his store in Las Vegas, Nevada, in October, 1963 (T. 19). The appellant apparently was charged with stealing from Mr. Shaw (T. 21).

The appellant testified at the time of the habeas corpus proceeding that at the time of his examination and commitment before the magistrate pursuant to the extradition war-

rant, he was without counsel and denied the appointment of counsel. At the time of the habeas corpus hearing the appellant was represented by an attorney. Based upon the above evidence, the trial court determined that there was no basis for relief by habeas corpus.

ARGUMENT

POINT I.

THE EVIDENCE IS SUFFICIENT TO ESTABLISH THAT THE APPELLANT WAS THE SAME PERSON NAMED IN THE WARRANT FOR EXTRADITION.

The evidence which is before this court on appeal concerning the question of whether or not the appellant is the same person as named in the Nevada warrant is amply sufficient to sustain the trial court's decision. It is to be noted that the warrant from the State of Nevada is not appended to the record. The trial court must have had access to the warrant and to any descriptive information contained therein. Further, the evidence supports a finding that the appellant himself acknowledged in the presence of Officer Jacobsen that he was the person named in the warrant, was aware of the charge against him, but could "beat the charge" on the question of search and seizure. Mr. Philip J. Shaw identified the appellant as being in Las Vegas, Nevada, and in his shop at the time the crime was committed. The warrant and complaint from the State of Nevada might well have charged the appellant with having committed a crime against Mr. Shaw. Finally, the appellant admitted his presence in the State of Nevada in October, 1963.

In *Scott v. Beckstead*, 13 Utah 2d 428, 375 P.2d 767 (1962), this court affirmed a determination of the trial

court that the appellant in that case was the same person sought by a warrant on charges from the State of Tennessee. The court relied principally on the similarity of names between the person named in the warrant and the appellant. The court indicated that this was sufficient evidence to support a finding that the person named in the warrant was the person being held for extradition. The court recognized that normally the extradition papers constitute prima facie evidence that the person held is the person sought in the warrant. In the instant case there is additional evidence to support the conclusion, including an admission by the appellant and an identification of him as being present in the requisitioning state. There is no merit to the appellant's case on this point.

POINT II.

THE APPELLANT HAS NOT BEEN DEPRIVED OF COUNSEL UNDER THE FEDERAL OR STATE CONSTITUTIONS SINCE HE WAS PROVIDED WITH COMPETENT COUNSEL AT THE TIME OF HIS HABEAS CORPUS PETITION AND HAD AN OPPORTUNITY AT THAT TIME TO CHALLENGE THE LEGAL BASIS FOR HIS EXTRADITION.

The record does not disclose the procedural form which resulted in the arrest of the appellant for purposes of extradition. 77-56-13, U.C.A. 1953, is the most common manner by which an individual is arrested for extradition to another state. It provides for the issuance of a warrant of arrest upon oath of a credible person before a magistrate that the individual named in the warrant is wanted for a crime in another state. 77-56-15 then provides for commitment awaiting requisition. The other means by which an individual may be arrested is pursuant to a governor's warrant under 77-56-7, U.C.A. 1953. 77-56-10, provides a

means for review of the basis for extradition by habeas corpus.

Although prior to a petition for habeas corpus the magistrate must determine from the warrants of arrest and complaints for extradition whether or not the arrested person should be committed and held for requisition, all of these matters may be challenged by habeas corpus. In the instant case the appellant availed himself of a petition for habeas corpus to review the identity question. Since it appeared from the evidence that there was a sufficient basis to believe the appellant is the person named in the Nevada warrant, the court properly denied the writ of habeas corpus. It may be that better practice would be to provide counsel at the time of the examination before the magistrate as well as at the time of habeas corpus. However, no case has been found which has compelled such a result.

In *Pike v. O'Brien*, 89 F. Supp. 168, D.C. Mass (1950) the court ruled that there was no requirement under the Federal Constitution that an individual be furnished with counsel at the time of presentment before a magistrate. The court stated:

“* * * I can find no authority in the United States Constitution for the proposition that a criminal fleeing across state borders has a right to be furnished with counsel from the moment that he is apprehended, or that in deciding whether or not he will voluntarily return to the state in which the crime was committed he has a right to the services of counsel.”

Concededly, this case was prior to the decision in *Gideon v. Wainwright*, 372 U.S. 335 (1963). However, it does not appear that in the instant case any prejudice could have resulted to the appellant. He had full opportunity at the

time of his petition for habeas corpus to review any and all matters relating to his extradition. At that time he had the assistance of competent and qualified counsel. This being so, there is no basis for appellate relief because of a denial of counsel.

POINT III.

THE APPEAL SHOULD BE DISMISSED SINCE NO FINAL ORDER HAS BEEN ENTERED IN THE INSTANT CASE.

The record in the instant case does not disclose that a final order was entered by the District Court denying the appellant's petition for habeas corpus. In *Aldridge v. Beckstead*, 396 P.2d 870 (Utah 1964), this court ruled in an extradition case that, where the trial court had failed to enter a final judgment in a habeas corpus hearing, the appeal was premature and should be dismissed. Since no final judgment appears of record in this case, the appeal is improperly before the court. All that appears of record is a minute entry, which is not a final judgment which will sustain an appeal. *Robison v. Fillmore Commercial and Savings Bank*, 61 Utah 398, 213 Pac. 790; *Lukich v. Utah Construction Company*, 46 Utah 317, 150 Pac. 298. It is submitted, therefore, that the appeal should be dismissed.

CONCLUSION

An analysis of the record and legal points raised in the instant appeal reflects that there is no basis for appellate relief. The appeal should be dismissed.

Respectfully submitted,

PHIL L. HANSEN

Attorney General

RONALD N. BOYCE

Chief Assistant Attorney General

Attorneys for Respondent

IN THE SUPREME COURT

THE STATE OF UTAH

18250

EUGENE MYERS

PLAINTIFF AND APPELLANT

V.S.

LEROY HADLEY

DEFENDANT AND RESPONDENT

APPELLANT'S BRIEF

Appeal from the Judgement of
the Second District Court
Honorable Charles G. Cowley, Judge

UNIVERSITY OF UTAH

APR 25 1954

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STATEMENT OF THE CASE

BY

This is an appeal from a habeas corpus on proceedings which Eugene Myers seeks relief from a denial of a Writ of Habeas Corpus in the district court of the Second District of the Second District - Weber County, Ogden, Utah. Appellant waived extradition from San Bernardino pursuant to a dismissal of a charge there. The erroneous conviction at Ogden, Utah (Supra) was also dismissed.

Based on a Grand Theft charge allegedly arising from the same erroneous said charges having been dismissed as previously stated, Las Vegas, Nevada - Clark County filed a complaint alleging Grand Theft and appellant has taken the position that he is innocent and now challenges the procedures followed by the court in the instant case.

ended.

ARGUMENT

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POINT I -

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Appellant has not been legally or reasonably identified and the person named in the said complaint from Las Vegas is not the same person as the appellant.

The one and only witness produced by the State to attempt to identify the appellant in the State of Nevada and furnish the appellant's true identity was a Captain Jacobsen of the Ogden City Police Dept. who in anger because of appellant's "lack of identification" fabricated the statement that the defendant told him that he was the person wanted in Las Vegas, aside from the above statement, Captain Jacobsen testified that he has not been in Las Vegas during the month of the alleged crime nor did he

any personal knowledge of the alleged offence, and
therefore, the Defendant could not be legally held for
Las Vegas Authorities solely upon the said fabricated
testimony of Captain Jacobsen and it reasonably follows that
it was error for the Municipal Court to deny Appellant's
request for a writ of habeas corpus and it was additional error for the Second District
Court (Salt Lake City, Utah), to affirm the conspicuous erroneous action by
the Municipal Court.

POINT II -

On October 9, before the Hon. Judge Hyde, Appellant was
"held without bail", for the Las Vegas Authorities wholly
upon the manufactured testimony of the said Captain Jacobsen
at the start of the such "Extradition Hearing", Appellant
informed the Court that he felt he was not competent to
represent himself in such proceedings and for the third time
requested Court Appointed Counsel which for the third time
was denied.

Appellant now contends that under POWELL V.S. ALABAMA, he
is entitled to legal representation "at every step of the
proceedings against him", POWELL V.S. ALABAMA 287, U.S. 45, 7
and the Recent GIDEON V.S. WAINWRIGHT.

CONCLUSION

It would seem a Travesty of Justice to require an American
Citizen to defend without counsel, and "hold him for Las Vegas
Authorities", upon the uncorroborated claimed (hearsay) testimony
of Captain Jacobsen (Supra).

The Sixth Amendment to the U.S. Constitution expressly
guarantees the Defendant the right to "defend in person and with
counsel".

Appellant prays that this court will remand the instant

ask to the ~~Supreme Court~~ with instructions
at the Defendant Court - appointed counsel.

Respectfully Submitted


Eugene Myers
Eugene Myers In Pro Per