

1968

Lonnie E. Strong v. John W. Turner : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

E. STRONG,

Plaintiff and Appellant,

TURNER, WARDEN,
STATE PRISON, et al.,

Defendant and Respondent.

BRIEF OF APPEAL

from the Supreme Court of the State of Utah,
at Court of Appeals.

FILE BRYANT E.

HANSEN
Attorney General, State of Utah,
for Respondent,
State Capitol Building,
Salt Lake City, Utah

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CASES CITED

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1. from a denial of a complaint
... .. of Corps, after a in the
... .. District Court of the State of in the
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... .. of 1963. (1967)..

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... .. Corps was

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11. The above is a true and correct copy of the proceedings were
read and approved by the Board of Directors and signed.
12. The above is a true and correct copy of the proceedings were
read and approved by the Board of Directors and signed. (11. 12.)

1. The above information was obtained from the following sources:

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STATEMENT OF THE FACTS CONTINUED

It is submitted that appellant was guilty of escape from illegal constitutional confinement.

And it is further submitted that the State of Kansas has a ——— placed on appellant for escape from prison.

The facts in the original incarceration in the State of Kansas, the records will bear out. Are briefly as follows. Appellant was in the State of Kansas, are that appellant was charged with the crime of Grand Larceny to which he entered without ever being — of his rights or the right to counsel, and subsequently not represented by Counsel at any stage of the proceedings against appellant by Counsel. And after the plea of guilty was entered to the alleged Crime of Grand Larceny this appellant was sentenced in the State of Kansas, to the term prescribed by law in the State for being an Habitual Criminal a Crime for which he had — been accused of and was in fact unaware of.,

ARGUMENT

POINT 1

MAINTIFF WAS CHARGED IN AN IMPROPER INFORMATION IN THE DISTRICT COURT WITH THE CRIME OF ARMED ROBBERY A CRIME WHICH HAS NOT BEEN COMMITTED AND DIFFERENT FROM THE — OFFENSE ALLEGED IN THE ORIGINAL COMPLAINT

Appellant will submit this point on the Court records of the Courts.

POINT 2

COURT APPOINTED COUNSEL WAS NEGLIGENT SO FAR AS TO BEING INCOMPETENT RENDERING APPELLANT TO HAVE BEEN DENIED THE EFFECTIVE REPRESENTATION BY COUNSEL

Appellant submits that he was not effectively represented by Court Appointed Counsel in the case at bar. In that Counsel induced Appellant in the Case at Bar to enter under duress through Coercive — a Plea of Guilty to an offense he is Not Guilty of.,

Counsel failed to consult with appellant as often as necessary in order to elicit matters of defense, or ascertain that possible defenses were unavailable. In fact Counsel failed to conduct appropriate investigations factual, and legal in order to determine what lines of defense could be developed.

In the case at bar Counsel was not even interested enough to see that appellant was sentenced for an offense that had not been committed.

Counsel was more interested in unloading the Court Appointed Counsel as quickly as possible. Subsequently Counsel Induced Appellant the Co-Defendant to enter a mentally Coerced Plea of Guilty - an offense he was innocent of. A plea of guilty must be entered freely and voluntarily by one competent to fully understand and - the consequences thereof.

In the case at bar the requirements of the decided case authorities set forth in the Federal Courts and the United States Supreme Court were not complied with. Starting with the decision in the case of Johnson v. Wainwright, 372 U.S. 335, 9 L. Ed. 2d 799, 83 S. Ct. 1030. Id. v. Maryland, 373 U.S. 59, 10 Law Edition 193, and 83 Supreme Court 1030. The landmark precedents of Escobedo v. Illinois, 378 U.S. 97 (1964). And Miranda v. Arizona, 384 U.S. 436 (1966). and - Moore v. New Jersey, 384 U.S. 719. The most recent being the case of Turner v. Turner, No. 39 Misc. Decided October 14, 1968. The United States Court of Appeals set forth the basic and fundamental features that are constitutionally essentially required in regard to the right to Counsel in the case of an indigent. See: Criminal Law - Vol. 4 No. 2 Coles v. Peyton, F. 2d (4th Cir. 1-6-68).

The Court started by stating that there were certain principles attached to the Constitutional right to Counsel.

1. Counsel for an indigent should be appointed promptly.
2. Counsel should be afforded a reasonable opportunity to be able to defend an accused.
3. Counsel must confer with his client without undue delay and when as necessary, to advise him of his rights and to elicit - lines of defense or to ascertain that potential defenses are -

4. Counsel must conduct appropriate investigations both moral and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial.

The Court went on to state that "an omission or failure to comply with these requirements constitutes a denial of effective representation of Counsel, unless the State, on which is cast the burden of proof once a violation of these precepts is shown, can establish each of prejudice thereby."

The plea of guilty entered in the case at bar is Constitutionally impermissible, for the reason that said plea was obtained as a result of inducement and through coercive methods. Appellant cites for the Court the case of Waley v. Johnson, 316 U.S. 101, - 31 S. Ct. 964, where the United States Supreme Court stated that:

"A conviction on a plea of guilty coerced by a Federal Law Enforcement Officer is not consistent with due process. The Waley case supra; goes on to say that - where a plea of guilty is so coerced that it is deprived of validity to support the conviction, the coercion likewise deprives the plea of validity as a waiver of accused rights to assail the conviction." The case at bar represents such a case."

"The case of Machibrodre v. United States, 368 U.S. 437, 82 S. Ct. 510, the leading authority regarding coerced pleas obtained through inducement. In this case the - United States Supreme Court stated that a plea of guilty if induced by promise or threats which deprive it of - the character of a voluntary act, it is void, and the conviction based on such a plea is open to collateral attack. The Court went on to say that a plea of guilty should not be accepted unless the Court assures itself that the same is completely voluntary and not tainted with any inducements or promises."

ARGUMENT POINT 3

APPELLANT IS ENTITLED TO RELIEF CONCERNING THE
PENDING DETAINER ALLEGING ESCAPE FROM THE KANSAS
STATE PENITENTIARY ON THE BASIS THAT HE WAS --
ILLEGALLY AND UNCONSTITUTIONALLY INCARCERATED IN
THE STATE OF KANSAS

Appellant was illegally and unconstitutionally convicted of the
offense of Grand Larceny, resulting in the imposition of a
fine and sentence for the Crime of being an Habitual Criminal, and
the appellant was not even aware that he was charged with.,

Appellant was not at any time during the proceedings against him
in the State of Kansas, advised of his rights; Nor represented by --
counsel during any stage of the proceedings against him.

In argument on this point the Court is referred to the records
of the State of Kansas.

CONCLUSION

For the foregoing reasons the lower Courts decision should of
course be reversed. And the Writ of Habeas Corpus should be granted.

Dated this 24 day of December 1968.

RESPECTFULLY SUBMITTED

Lonnie E. Strong

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