

2007

Chavez v. Utah : Brief of Appellant

Utah Court of Appeals

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JOSEPH CHAVEZ
(APPELLANT)

vs.

STATE OF UTAH
(APPELLEE)

CASE NO: 20070133

DATE: JUNE 25, 2007

BRIEF OF APPELLANT

APPEAL FROM ORDER/DISMISSAL OF PETITION
FOR POST CONVICTION RELIEF

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FILED
UTAH APPELLATE COURTS

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JOSEPH CHAVEZ
(APPELLANT)

VS.

STATE OF UTAH
(APPELLEE)

CASE NO. 20070133

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

THIS APPEAL IS FROM THE FINDINGS AND CONCLUSIONS OF THE APPELLANTS PETITION FOR POST CONVICTION RELIEF. ON FEBRUARY, 26, 2007, JUDGE MICHAEL D. LYON SIGNED AN ENTRY OF JUDGEMENT DENYING THE APPELLANTS PETITION FOR POST CONVICTION RELIEF.

THIS AFFIRMED THE APPELLANTS UNCONSTITUTIONAL SENTENCE, NOT IN ACCORDANCE WITH THE PLEA AGREEMENT BETWEEN THE PETITIONER AND THE ORIGINAL DEPUTY WEBER COUNTY ATTORNEY.

ALSO TRANSCRIPTS / RECORDS SHOW THAT JUDGE LYONS ON 1-31-07 AS WELL AS OTHER DOCUMENTS (FINDINGS AND CONCLUSIONS) ADMITS THE PETITIONER DID NOT HAVE HIS DUE PROCESS RIGHT TO ALLOCATION AFFORDED HIM.

THE APPELLANT FILED A NOTICE OF APPEAL PURSUANT TO RULES OF APPELLATE PROCEDURE RULE 42. AND THE FOUR OVER PROVISIONS OF UTAH CODE 78-29-3 THE APPELLATE COURT HAS JURISDICTION OF THIS CASE.

POINT I

WAS THE APPELLANT/PETITIONER DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE I SECTIONS 7 AND 12 OF THE UTAH CONSTITUTION, WHEN HIS ATTORNEY FAILED TO ACT IN THE BEST INTERESTS OF HIS CLIENT. FURTHER EXACERBATED BY HIS FAILURE TO INVESTIGATE THE CHARGES BEING BROUGHT AGAINST THE APPELLANT?

STANDARD OF REVIEW

STRICKLAND V. WASHINGTON 466 U.S. 668, 80 L.Ed. 2d 671 (1984) "TWO PRONGED TEST"

FIRST, THE DEFENDANT MUST SHOW THAT COUNSEL'S PERFORMANCE WAS DEFICIENT.

THIS REQUIRES SHOWING THAT COUNSEL MADE ERRORS SO EGBREGIOUS THAT COUNSEL WAS NOT AS THE COUNSEL GUARANTEED THE DEFENDANT BY THE 6TH AMENDMENT.

SECOND, THE DEFENDANT MUST SHOW THAT THE DEFICIENT PERFORMANCE PREJUDICED THE DEFENSE. THIS REQUIRES SHOWING THAT COUNSEL'S ERRORS WERE SO SERIOUS AS TO DEPRIVE THE DEFENDANT OF A FAIR TRIAL, A TRIAL WHOSE RESULT IS RELIABLE.

Id. AT 466 U.S. AT 687 80 L. Ed 2d AT 693

POINT II

WAS THE PLAINTIFF/PETITIONER'S GUILTY PLEA INDUCED UNDER FALSE PRETENSES?

STANDARD OF REVIEW

A JUDGE MUST ADDRESS THE DEFENDANT PERSONALLY IN OPEN COURT TO INFORM THE DEFENDANT OF, AND DETERMINE THAT THE DEFENDANT UNDERSTANDS THE FOLLOWING:

- (1) THE RIGHT NOT TO GUILTY (2) RIGHT TO JURY TRIAL (3) RIGHT TO BE REPRESENTED BY COUNSEL (4) NATURE TO CHARGE TO WHICH DEFENDANT IS PLEADING (5) ANY MANDATORY/MINIMUM PENALTY (6) ANY MAXIMUM PENALTY

FEDERAL RULES OF CRIMINAL PROCEDURE

RULE 11 (b) (1) RULE 11 (b) (2) RULE 11 (b) (3)

ALTHOUGH A JUDGE IS NOT BOUND BY A PLEA AGREEMENT IT MUST BE MADE "PERFECTLY CLEAR" TO THE DEFENDANT THAT THE JUDGE IS NOT BOUND BY IT. (UT. CT RULES VOL 4)

UTAH RULES OF CRIMINAL PROCEDURE RULE 11 (c), (1), (2), (3), (4), (5), (6), (7), (8), (22)

POINT III

WAS THE APPELLANT DENIED DUE PROCESS RIGHTS WHEN THE TRIAL COURT FAILED TO ALLOW ALLOCATION, THUS POTENTIALLY MITIGATING ANY SENTENCE.

STANDARD OF REVIEW:

UTAH RULE OF CRIMINAL PROCEDURE 22(a) CODIFIES THE COMMON-LAW RIGHT OF ALLOCATION. STATE V. WANOSIK, 79 P.3d 937, 943 (UTAH 2003).

RULE 22 STATES: THAT BEFORE IMPOSING SENTENCE THE COURT SHALL AFFORD THE DEFENDANT "THE DEFENDANT AN OPPORTUNITY TO MAKE A STATEMENT AND TO PRESENT ANY INFORMATION IN MITIGATING OF PUNISHMENT OR TO SHOW ANY LEGAL CAUSE WHY SENTENCE SHOULD NOT BE IMPOSED."

POINT IV

WAS THE APPELLANT'S PLEA DEAL MADE KNOWINGLY AND FULLY INFORMED.

STANDARD OF REVIEW

A JUDGE MUST ADDRESS THE DEFENDANT PERSONALLY IN OPEN COURT TO INFORM DEFENDANT OF AND TO DETERMINE THAT DEFENDANT UNDERSTANDS THE FOLLOWING: (1) THE RIGHT NOT TO PLEAD GUILTY (2) RIGHT TO JURY TRIAL (3) RIGHT TO BE REPRESENTED BY COUNSEL (4) NATURE TO CHARGE TO WHICH DEFENDANT IS PLEADING (5) ANY MANDATORY / MINIMUM PENALTY (6) ANY MAXIMUM PENALTY

FEDERAL RULES OF CRIMINAL PROCEDURE RULE 11(b) (1) 11(b)(2) 11(b)(3)

ALTHOUGH A JUDGE IS NOT BOUND BY A PLEA AGREEMENT IT MUST BE MADE PERFECTLY CLEAR TO THE DEFENDANT THAT THE JUDGE IS NOT BOUND BY IT (UT. CR. RULES VOL 4)

UTAH RULES OF CRIMINAL PROCEDURE RULE 11(e) (1), (2), (3), (4), (5), (6), (7), (8), (9), (27)

CONSTITUTIONAL PROVISIONS, STATUTES, RULES

UNITED STATES CONSTITUTION

5TH AMENDMENT

NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL OR OTHERWISE INFAMOUS CRIME UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF; NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION

14TH AMENDMENT

SECTION 1

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES AND SUBJECT TO THE JURISDICTION THEREOF ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, OR LIBERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS

UTAH CONSTITUTION

ARTICLE I, SECTION 7

NO PERSON SHALL BE DEPRIVED OF LIFE LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW.

STATEMENT OF CASE

ON OR ABOUT JULY 29ST 2003 POLICE FOUND ITEMS AT JOSEPH CHAVEZ HOME THAT BELONGED TO HIS NEIGHBOR (JAVIER LUNA). THE ITEMS WERE GIVEN BACK TO LUNA. NO CHARGES WERE FILED TIL A WEEK LATER. CHAVEZ WAS ASKED TO GIVE A WRITTEN STATEMENT AND WAS BOOKED ON CHARGES OF BURGLARY (FELONY 2^O) THEFT (FELONY 3^O) AND REC. STOLEN PROPERTY (FELONY 3^O)

STATEMENT OF FACTS

ON JULY 12 2004 CHAVEZ SIGNED A PLEA AGREEMENT.

ALL CHARGES BUT THE RECEIVING STOLEN PROPERTY (3rd FELONY) WERE DISMISSED.

ALSO, SENTENCING STIPULATIONS WERE MADE ON THE AGREEMENT AS FOLLOWS: GOOD TIME, CONCURRENT SENTENCING, WORK RELEASE AND JAIL IN LIEU OF PRISON.

SUMMARY OF ARGUMENT

- CHAVEZ CONTENDS THAT HE WAS NOT GIVEN THE EXACT PROVISIONS AS WAS LISTED IN THE PLEA AGREEMENT.
- ALSO; THAT HIS RIGHTS WERE NOT UPHOLD (DUE PROCESS)
- AND, THAT PROPER COURT RULES WERE NOT FOLLOWED

ARGUMENT

- CHAVEZ CONTENDS THAT HE WAS NOT GIVEN A JAIL SENTENCE BUT A PRISON SENTENCE STAYED TO A JAIL TERM WITH PROBATION.

~~██████████~~ THERE'S A DIFFERENCE BETWEEN A SUSPENDED PRISON SENTENCE AND A JAIL SENTENCE, CHAVEZ EXPECTING THE LATTER.

* NOTE (* SEE ATTACHED/ENCLOSED PG. 44 EVIDENTIARY HEARING) LINES 12 - 15

- CHAVEZ CONTENDS THAT HE WAS NOT MADE PERFECTLY CLEAR TO HIM (AS PER COURT RULES Vol 4) JUDGE WAS NOT BOUND BY PLEA AGREEMENT.

* NOTE: NEVER DURING COURT PROCEEDINGS DID PROSECUTION, DEFENSE ATTORNEY, OR JUDGE "TELL" CHAVEZ THAT JUDGE WAS NOT BOUND BY PLEA AGREEMENT IN "OPEN COURT"; THUS: AMOUNTING TO MAKING IT "PERFECTLY CLEAR" AS REQUIRED.

- JUDGE LYONS NEVER AFFORDED CHAVEZ HIS RIGHT TO ALLOCUTION WHICH MUST BE ADDRESSED / AFFORDED PRIOR TO SENTENCING. HAD CHAVEZ BEEN AFFORDED THIS "DUE PROCESS" RIGHT HE WOULD OF THEN BEEN ABLE TO TELL THE JUDGE THAT HE WANTED TO NO LONGER PLEAD GUILTY BUT EXERCISE HIS RIGHT TO JURY TRIAL, THIS BEING THE MOST DAMAGING ERROR IN THIS CASE.

* SEE ~~PAGES~~ PG 3 OF SENTENCING HEARING, LINES 11-12 WHERE JUDGE NEVER GAVE CHAVEZ ALLOCUTION ... FLOWED RIGHT TO SENTENCE

* SEE ALSO EVIDENTIARY TRANSCRIPT PAGE 6 LINES 14-18 WHERE JUDGE ADMITS TO NOT AFFORDING DUE PROCESS RIGHT OF ALLOCUTION!

- IN COURT - / COURT - 4/11
- CHAVEZ HAD A DIFFERENT PUBLIC DEFENDER AND PROSECUTOR THAN THE PARTIES THAT SIGNED PLEA AGREEMENT WHICH NOT ONLY CAUSED MISUNDERSTANDING AND CONFUSION, BUT BY CHAVEZ' COUNSEL NOT MAKING IT "PERFECTLY" CLEAR TO CHAVEZ THAT JUDGE WAS NOT BOUND BY PLEA AGREEMENT, AND ALSO NOT MAKING SURE CHAVEZ RIGHT OF ALLOCUTION TOOK PLACE AS WELL AS COUNSEL NOT TAKING RECESS BEFORE SENTENCING (MUST SEE VIDEO TO OBSERVE THIS CONFUSION) SO THAT PLEA AGREEMENT COULD BE REDESIGNED AS WELL AS POSSIBLY WITHDRAWING GUILTY PLEA - THUS: AMOUNTING TO INEFFECTIVE ASSISTANCE OF COUNSEL.

- CHAVEZ ASKS THE COURT OF APPEALS TO FOCUS DIRECTLY ON THE FACT THAT JUDGE LYONS ADMITS THAT HE DID NOT EXPRESSLY ASK CHAVEZ IF HE HAD ANYTHING TO SAY IN THE FORM OF ALLOCUTION. THIS IS THE JUDGE'S DUTY. THE COURTS MUST NOT ASSUME THAT CHAVEZ HAD NOTHING TO SAY.

- IF WE EXAMINE THE SENTENCING HEARING TRANSCRIPTS (P. 3 ATTACHED) WE CAN CLEARLY SEE ON LINES 11-12 WHERE JUDGE SPOKE OF CHAVEZ CRIMINAL HISTORY AND RECOMMENDATIONS AND WENT ON TO SENTENCE CHAVEZ WITHOUT THE DUE PROCESS RIGHT OF ALLOCUTION.

* THIS RIGHT IS JUST AS IT SOUNDS: A "PROCESS" IN THE COURT OF LAW WHICH IS "DUE" TO A CITIZEN OF THE UNITED STATES OF AMERICA IN ANY COURT PROCEEDING(S)

- THERE WERE OTHER NUMEROUS COURT RULES MENTIONED IN THIS APPEAL THAT WERE NOT CLEARLY FOLLOWED / UPHOLD.
- CHAVEZ ASKS THE UTAH COURT OF APPEALS TO RECOGNIZE THE ABOVE MENTIONED RIGHTS VIOLATIONS, RULES NOT COMPLETELY AND/OR PROPERLY FOLLOWED, AND ALLOW CHAVEZ TO HAVE HIS DAY IN COURT WITH A TRIAL BY JURY OR SUSPEND REMAINDER OF HIS SENTENCE WHICH IS JANUARY 15 2008

1 Q (BY MR. CHAVEZ) Ms. -- I forget your last name.

2 THE COURT: Corp.

3 A. It's Corp.

4 Q. Corp. Could you please answer me a question? In your
5 opinion -- well, a legal -- a legal question. Is it jail --
6 is a jail sentence -- is a suspended prison sentence the same
7 as a jail sentence?

8 A. Well, it can be. The way you're stating it it's not
9 clearly because you didn't mention a suspended jail --
10 suspended prison sentence with jail time. Sometimes you can
11 suspend prison and not go to jail so...

12 Q. Can you understand where the average person on the
13 streets that's not familiar with law would think that they
14 could get a one-year jail term?

15 A. The average person on the streets? Yes, I could
16 understand why they would not be familiar.

17 MR. CHAVEZ: Okay. Thank you. I don't have
18 anything further.

19 MR. DELPORTO: I have no further questions.

20 THE COURT: Thank you, Ms. Corp.

21 THE WITNESS: And, your Honor, could I get that
22 letter back for my file?

23 THE COURT: Yes.

24 MR. CHAVEZ: Oh, I'm sorry. And can I get my order
25 to the sheriff copy, please?

* (NO ALLOCUTIONS)

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1 wouldn't oppose work release.

2 **MR. GRAVIS:** The Court may want to review the plea
3 agreement. He says that's all in there. Mr. Laker obviously
4 drew it up, so I haven't seen it, but Mr. Laker's notes show
5 all these things in there.

6 **THE COURT:** It does provide for a concurrent
7 sentencing. Well, but for the recommendation of the State
8 this Court would send you to prison, Mr. Chavez. You have an
9 extensive history. You've been to prison before. You have
10 violated parole three times. It's with great reservation
11 that I'll go along with the recommendation.

12 It's the sentence of this Court that -- in Case No. 1031
13 that you be committed to the Utah State Prison for a period
14 of five -- from zero to five years and in case -- but that
15 prison sentence is stayed. You are placed on probation.

16 The Court further, in Case No. 3489, sentences you to
17 serve one year in jail on the class A misdemeanor conviction
18 and six months on the class B misdemeanor convictions. All
19 of these sentences shall run concurrently with each other.

20 The Court orders that you serve one year in the county
21 jail. You may have credit for the time that you have served,
22 no good time.

23 **MR. GRAVIS:** Work release, Your Honor?

24 **THE COURT:** No.

25 The Court orders also that you sign a standard probation

1 But I have no memory, Mr. Chavez, of ever granting both.
2 I think you get one or the other. And I think that my
3 initial impression was that you ought to go to prison, and --
4 but I acquiesced to the agreement between both the State and
5 yourself and went along with probation. But I will tell you
6 that my mind was you're going to just serve a straight jail
7 sentence.

8 In the end I made a concession, one that I didn't really
9 like. I gave you work release, but there is just no way this
10 Court was going to give you also good time on a work release.
11 You don't get one or the other -- you get one or the other in
12 my courtroom. And I don't know about -- I can't speak for
13 other judges. I just don't grant both.

14 The second point that I want to say, and I think I -- I
15 know I addressed this in my decision, is that -- and I regret
16 that I -- after all of the exchange that I did not expressly
17 ask you if you had anything else to say in the form of
18 allocution, but I sense that probably that got lost on me
19 because there had been a free exchange between us. You
20 had -- you had asked me for work release. You had also
21 protested that what was coming down at the time -- initially
22 at sentencing was not what had been agreed, and so it was my
23 impression that you had been free to say what you wanted to
24 say.

25 But be that as it may, it's the Court's judgment that

CERTIFICATE OF MAILING

11

I JOSEPH CHAVEZ
BRIEF (OF APPELLANT)
PARTIES: BY MAIL

SENT A COPY OF
TO THE FOLLOWING
ON JULY 19 2007

BY Joseph Chavez
JOSEPH CHAVEZ
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