

1968

The State of Utah v. Robert Lee Dixon, Hatch & Mcrae, Weber County, A Body Corporate and Politic of the State of Utah, The State of Utah v. Dennis A. Hunter, Hatch & Mcrae, Summit County, A Body Corporate and Politic of the State of Utah : Brief of Respondent Weber County

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

THE STATE OF UTAH, *Plaintiff*

vs.

ROBERT LEE DIXON, *Defendant*

HATCH & McRAE, *Appellants*

WEBER COUNTY, a body corporate and

THE STATE OF UTAH, *Plaintiff,*

Case No.
11187

THE STATE OF UTAH, *Plaintiff,*

vs.

DENNIS A. HUNTER, *Defendant,*

HATCH & McRAE, *Appellants,*

SUMMIT COUNTY, a body corporate
and politic of the State of Utah,

Respondent.

CASE NO.
11199

FILED

JUL 9 - 1968

BRIEF OF RESPONDENT

WEBER COUNTY

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT of the STATE OF UTAH

THE STATE OF UTAH, *Plaintiff*

vs.

ROBERT LEE DIXON, *Defendant*

HATCH & McRAE, *Appellants*

WEBER COUNTY, a body corporate and
politic of the State of Utah, *Respondent*

DENNIS A. HUNTER, *Defendant,*

HATCH & McRAE, *Appellants,*

SUMMIT COUNTY, a body corporate
and politic of the State of Utah,

Respondent.

RESPONDENT'S BRIEF WEBER COUNTY

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STATEMENT OF FACTS

The Statement of Facts, insofar as it applies to
STATE vs. ROBERT LEE DIXON, is substantially
correct. However, defendant retained and paid for
counsel for his trial in Weber County and after con-
viction requested the Supreme Court of Utah to appoint
counsel for the purpose of appeal only.

I.

COUNTIES DO NOT HAVE A STATUTORY OBLIGATION TO PAY FOR COUNSEL NOT APPOINTED UNDER THE DIRECTION OF THE COUNTY.

Respondent of Weber County does not have any argument with the basic premise of the appellant. However, Weber County takes the position that if it is obligated to compensate appointed counsel, this obligation rests on Statutory obligation only. (Ruckebrod vs. Mullins, 102 Utah 548, 133 P. 325.)

The statutes which provide for appointment of counsel for indigent defendants 77-64-1 to 77-64-7 Utah Code Annotated 1953 nowhere mentions or contemplates the situation before us in this case; that is, the appointment by the Supreme Court of counsel to represent an indigent in an appeal where counsel was retained and paid by the defendant for the District Court trial.

Statute 77-64-1 Utah Code Annotated in 1953 provides what the minimum standards are for the defense of indigent defendants provided by the county and in Section 6 thereof provides "Includes the taking of appeals and the prosecuting of other remedies before or *after a conviction considered by the defending counsel to be in the interest of justice* (Italics ours).

This would indicate without room for argument that defending counsel is not someone who has been retained and paid for his services in the trial court but the counsel appointed and provided by the county for the defense of the indigent. Is it for the indigent

to say over the better judgment of the defending counsel that the county must furnish counsel and costs for appeal. Obviously not. Such a decision is solely within the judgment of the defending counsel who has been provided by the county.

As further clarification of this position, see 77-64-3 Utah Code Annotated in 1953, entitled "Duties of Assigned Counsel" which provides

"When representing an indigent person the assigned counsel shall . . . (2) prosecute any appeal or other remedies before or after conviction *that he considers to be in the interest of justice* (Italics ours.)"

If the county had provided trial counsel for Dixon and if the trial counsel, in the interest of justice, had concluded that an appeal should be prosecuted defendant's position in seeking compensation would be stronger. This is not the case before the court, to hold otherwise would open the flood gates for situations where two burdensome situations would occur: (1) that an accused could and would choose and pay for his own counsel for all proceedings up to and through the District Court and thereafter against the better judgment of counsel insist on an appeal and require the taxpayers to assume the burden of the expense, or (2) that an assigned counsel on the City Court or District Court level could conclude that it was not in the interest of justice to prosecute an appeal but yet have the defendant petition the Supreme Court for appointed counsel to prosecute an appeal and have the burden fall on the county in which the trial had been held.

None of this is contemplated by the statute. It is the function of the county, under the statutes quoted, to provide counsel for qualifying indigents and an appeal is to be prosecuted only when counsel assigned by the court and no one else, in the interest of justice deems an appeal to be proper.

POINT II.

THE PROCEDURE UNDERTAKEN BY APPELANTS TO SECURE COMPENSATION WAS NOT AN APPROPRIATE PROCEDURE IN THE DIXON CASE.

Statute 17-5-10 Utah Code Annotated in 1953 provides for the sole procedure to be followed in order for the Board of County Commissioners to be authorized to hear or allow a claim against the county. Appellants' Exhibit A in the Dixon case is ample evidence that counsel for Dixon did not follow statutory procedure and therefore did not put the Weber County Board of Commissioners in the position where they could legally consider their claim if it were otherwise valid.

CONCLUSION

Respondent of Weber County requests the Court to rule that unless the appeal is prosecuted by counsel appointed by the county, the county is not obligated to pay any of the costs of the appeal, and that the claim for compensation submitted by counsel for Dixon was not in accordance with the Statutory requirements.

Respectfully submitted,

GEORGE B. HANDY
Deputy Weber County Attorney