1970

State of Utah v. Robert Belcher : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

- vs -

ROBERT BELCHER,

Defendant-Appellant

Case No. 12077

BRIEF OF APPELLANT

Appeal from the Judgment of the
Third Judicial District Court for Salt Lake County,
Honorable D. Frank Wilkins, Judge.

JOHN D. O'CONNELL
Legal Defender

231 East Fourth South
Salt Lake City, Utah
Attorney for Appellant

VERNON ROMNEY
Attorney General, State of Utah

State Capitol
Salt Lake City, Utah
Attorney for Respondent

TABLE OF CONTENTS

CASES CITED

STATUTES CITED

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

- vs -

ROBERT BELCHER,

Defendant-Appellant

Case No. 12077

BRIEF OF APPELLANT

STATEMENT OF NATURE OF CASE

The appellant appeals from the conviction of the crime of assault on a guard without maice aforethought taken when the court was without jurisdiction over the case pursuant to Utah Code Ann. §77-65-2 (Supp. 1967), the State Detainer Act.

DISPOSITION IN THE LOWER COURT

On December 8, 1969, the Third District Court, the Honorable D. Frank Wilkins presiding, granted the state's motion to extend the period for disposing of this

case beyond the ninety day period required after appellant filed a notice and request for final disposition of the pending charges pursuant to Utah Code Ann. §77-65-1 (Supp. 1967), whereupon the defendant entered a plea of guilty to the crime of assault on a guard without malice aforethought and was sentenced to the Utah State Prison for the indeterminate terms as provided by law; said sentence to commence at the conclusion of the present sentence now being served.

RELIEF SOUGHT ON APPEAL

Appellant submits that the conviction taken by the Third District Court should be reversed and the matter dismissed with prejudice pursuant to Utah Code Ann. §77-65-2 (Supp. 1967).

STATEMENT OF FACTS

The appellant, Mr. Robert Belcher, was committed to the Utah State Prison in 1967 for the crime of burglary in the second degree. Appellant was charged in a formal complaint filed August 6, 1969, charging him with the crime of assault by a conviction of a guard with malice aforethought. On August 8, 1969, defendant appeared in city court and preliminary hearing was set for November 20, 1969, (R-2) 104 days later.

On September 19, 1969, Mr. Belcher filed with an authorized agent at the Utah State Prison a notice and request of final disposition of the pending charge (R-10, Tr. 36) pursuant to Utah Code Ann. §77-65-1 (Supp. 1967).

Defendant was not arraigned until December 1, 1969, 117 days after the formal complaint was signed and seventy-three days after the notice of disposition was filed. On the same day, defense counsel gave notice of intent to defend on the ground of insanity (R-9) pursuant to Utah Code Ann. §77-22-16. Trial was set for December 8, 1969.

On December 8, nine days before the required ninety days would expire after the filing of the notice of disposition, a full week after defendant had filed the notice of defense of insanity, and the day previously set for trial, the state made a motion to extend the time for disposing of the case to a period beyond the ninety day limit. The motion was granted, over defense counsel's objection, by the Honorable D. Frank Wilkins of the Third District Court on the grounds that defendant had filed a notice of the defense of insanity and the fact that the court calendar was crowded. Trial was reset for January 26, 1970 (Tr. 39, R-49), five weeks past the time that the ninety days statutory period expired.

After several subsequent delays, (R-51, R-52) defendant entered a plea of guilty to the lesser included offense of assault by a convict on a guard without malice

aforethought (Tr. 41-4) and sentenced to an indeterminate terms as provided by law, said sentence to commence at the conclusion of the present sentence now being served.

ARGUMENT

The trial court erred in convicting and sentencing defendant in that pursuant to Utah's Detainer Statute §77-65-1 and 2, Utah Code Ann., the court had no jurisdiction to proceed because of the state's failure to bring defendant to trial within ninety days of the filing of the request for disposition.

When the legislature passed the Utah Detainer Statute in 1965 it provided that any person serving a prison term with an outstanding, untried indictment, information, or complaint against him in the State of Utah may cause the State to bring such person to trial within ninety days from the filing by such person of a notice and request for disposition of pending charges or the courts of the State shall lose jurisdiction of such pending charge under Utah Code Ann. §77-65-2. A prisoner must only give written notice of his desire for disposition of the pending charge of the official having custody over him and the burden is then on the official to serve notice of such request to the proper prosecutor and court. Utah Code Ann. §77-65-1 (b). The State then must carry

the burden of bringing the prisoner to trial on the pending charges or the courts lose jurisdiction of such charges and proceedings. Utah Code Ann. §77-65-2.

Defendant Belcher complied with the provisions of the Detainer Statute by serving notice on John W. Turner, Warden, Utah State Prison, via an authorized agent, on September 19, 1969. The failure of the state to bring Mr. Belcher to trial within ninety days deprived the State of Utah of jurisdiction over the case (§77-65-2). Therefore, the case should be dismissed. §77-65-2.

The Utah Supreme Court in *State v. Wilson,* 22 Utah 2d 361, 453 P. 2d 158 (1969), stated that the purpose of the statute is to carry into effect the constitutional guarantee of a "speedy trial" and to prevent those charged with enforcement of criminal statutes from holding over the head of a prisoner undisposed charges against him. The court in the Wilson case dismisesd the charge with prejudice against a prisoner who had filed a request for disposition and not brought to trial within ninety days. The fact that the prisoner did not request an earlier setting did not mean that he lost the protection of the statute. The court held that the burden of complying with the statute rests on the prosecutor.

The Utah Detainer Statute is mandatory. The defendant must be tried within ninety days or the courts lose jurisdiction of the case. The only proviso in the statute is that the state may request a continuance beyond the ninety day period for good cause.

The state in this case did not hold the preliminary hearing for this defendant until 62 days after the filing of the notice and request for disposition i.e. September 19, 1969 to November 20, 1969. The defendant was bound over, but the arraignment was not held until eleven days later, seventy-three days after the filing of the notice, even though the state knew that this was a capital case when defendant was charged and knew that more time is required for the preparation and trial of a capital case than a non-capital case, and knew that it would be difficult if not impossible to get a capital case to trial within the two weeks remaining before the ninety day period expired. Yet the prosecutor in this case waited until 81 days of the 90 day required period had expired before making a motion for a continuance, which motion was based on a lack of time for preparation and trial of this capital case.

The motion for a continuance beyond the 90 day period was also based on the fact that the defense had submitted a notice of defense of insanity, and that preparation for such a defense by the state, and the court would require more time. However, the notice of defense of insanity was given on the day of arraignment. The earliest possible time such notice could be given. The notice of defense of insanity statute, Utah Code Ann. §77-22-16, requires that such notice be given within 10 days after arraignment, but within four days before

trial. Defendant complied with this statute precisely by giving notice on the day of arraignment, December 1, 1969, when the trial was set for December 8, 1969.

The purpose and intent of the legislature in passing the State Detainer Act with its ninety day limitation period will be defeated if prosecutors are allowed to continue the practice of waiting for over two and one-half months after a request for disposition is made to bring the defendant to arraignment and then on the day for trial plead their own negligence in lack of preparation and time to prepare as good cause for a continuance. If such practice is allowed the state is in effect putting the defendant to a choice as to defend on the basis of insanity which basis may be a substantial defense and therefore waive his statutory and constitutional right to a speedy trial or give up his right to a speedy trial in order to defend on the basis of insanity. Neither statute can serve its intended purpose if a defendant is made to make such a choice. The state detainer statute makes no exception for a defense based on insanity; but quite to the contrary is a mandatory statute requiring trial within 90 days or the courts lose jurisdiction of the case. To require him to waive his right to a speedy trial in order to defend on the basis of insanity is to require him to make a choice between two statutorily and constitutionally guaranteed rights. It cannot be concluded that the legislature in passing the State Detainer Act had such an intent even with the inclusion of the proviso

"for good cause" a continuance may be had. Neither can it be deduced that the legislature had any such intent in passing the notice of defense of insanity provision. Utah Code Ann. §77-22-16. That statute requires only that notice be given within ten days after arraignment or before four days before trial. There is no provision therein for a continuance if such notice is properly given.

Defendant Belcher complied with the State Detainer Statute. He had no further obligation beyond making such request Utah Code Ann. §77-65-1 (b). The burden of complying with the statute rested on the prosecutor. *State v. Wilson, supra* at p. 160. The Appellate Division of New York has held that the fact that the prosecuting authorities and appropriate court do not receive notice of the prisoner's request when filed is immaterial, for the prisoner has no obligation beyond making the request. *People v. Masselli,* 17 AD 2d 367, 234 NYS 2d 929 (1960), aff'd 13 NY 2d 1, 191 NE 2d 457 (1963). *A fortori* a prisoner should not bear the consequences if the prosecuting authorities ignore such request after it has been properly filed, waste time getting the defendant to preliminary hearing and arraignment and then plead their own negligence as a basis for lack of time to prepare to try a capital case, and the need for a continuance.

In the instant case, if respect for the statute is to be obtained, the adverse consequences of the state's failure to bring the defendant to preliminary hearing and

arraignment as well as their failure to bring the defendant to trial should fall on the prosecutor and not the defendant. See *State v. Chirra,* 79 NJ Super 270, 191 A 2d 308 (1963). Such a position is recognized in *Mapp v. Ohio,* 367 U.S. 643, 81 S.Ct. 1683, 6 L. Ed 2d 1081 (1961), wherein the United States Supreme Court at 659 stated:

> The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.

Robert Belcher, the defendant filed his written notice for request of disposition on September 19, 1969. The state showed no reason other than its own negligence and lack of preparation as cause why the trial could not be had within the ninety day period. Consequently, by the provision of Utah Code Ann. §77-65-2, the trial court was without jurisdiction to proceed against Mr. Belcher after December 17, 1969, when the 90 day period expired. Therefore, the conviction and sentencing of the defendant of the court below should be reversed and the matter dismissed with prejudice.

CONCLUSION

For the reasons that the state did not bring the defendant to trial within the 90 day period after the

filing of the request for disposition of charges and did not show good cause why the case had to be continued, the judgment of the District Court should be reversed and the matter dismissed with prejudice. Utah Code Ann. §77-65-2.

Respectfully submitted,

JOHN D. O'CONNELL
Legal Defender

231 East Fourth South
Salt Lake City, tUah

Attorney for Appellant