

2000

# Roger Stephen Shuffield v. Samuel Smith : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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ROGER STEPHEN SHUFFIELD, :

Plaintiff-Appellant :

vs. :

SAMUEL SMITH, Warden :  
Utah State Prison :

Defendant-Respondent :

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13 JUN 1977

Case No. 14214

BRIGHAM YOUNG UNIVERSITY  
J. Reuben Clark Law School

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BRIEF OF APPELLANT

The appellant, ROGER STEPHEN SHUFFIELD, appeals from a judgement entered against him in the Third Judicial District Court.

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Defendant-Respondent :

Case No. 14214

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Roger Stephen Shuffield, appeals from a judgment entered against him in the Third Judicial District Court on a petition for a Writ of Habeas Corpus.

DISPOSITION IN THE LOWER COURT

Appellant plead guilty to second degree murder in 1974 and was sentenced to a term of life imprisonment. On July 3, 1975, a Writ of Habeas Corpus hearing was held before Judge G. Hal Taylor and his petition was denied.

## RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the lower court decision and that petitioner be either given a new trial or released from custody.

## STATEMENT OF THE FACTS

In 1974, the defendant was charged with Murder in the First Degree, a capital offense. His attorneys advised him that there was a good chance that he would receive the death penalty if convicted and that the defendant could avoid this risk by pleading guilty to Murder in the Second Degree. The defendant, for the sole purpose of avoiding the death penalty, plead guilty to Murder in the Second Degree. At the habeas corpus hearing, the defendant testified that he was unaware of the fact that by pleading guilty he was effectively giving up his right to confront witnesses at trial.

## ARGUMENT

### POINT I

THE DEFENDANT'S GUILTY PLEA WAS NOT KNOWINGLY AND INTELLIGENTLY MADE BECAUSE IT WAS ENTERED UPON THE ADVICE OF COUNSEL THAT THE DEATH PENALTY COULD HAVE BEEN IMPOSED WHEN IN FACT UTAH'S DEATH PENALTY PROVISION WAS UNCONSTITUTIONAL.

In Furman v. Georgia, 408 U.S. 238, the United States Supreme Court declared unconstitutional death penalty schemes which allow juries to impose the death penalty in an arbitrary manner without adequate guidelines.

In Kelbach and Lance v. Utah, 408 U.S. 935, 33 L. Ed. 2d 75, 92 S. Ct. 2858, (1972), the Utah Supreme Court's decision upholding the constitutionality of Utah's prior death penalty provision was appealed to the United States Supreme Court. That court, in a memorandum decision stated:

"Judgement vacated insofar as it leaves undisturbed the death penalty imposed and case remanded to the Supreme Court of Utah for further proceedings." 33 L. Ed. at 751

The court cited Stewart v. Massachusetts, 408 U.S. 845, 33 L. Ed. 744, 92 S. Ct. 2845 (1972), in which it held the Massachusetts death penalty statute constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

It is thus clear that Utah's prior death penalty statute was effectively declared unconstitutional in the Lance and Kelbach decision. In that Utah's present states, Utah Code Annotated Section 76-3-207, does not remedy the infirmities found to exist under the prior statute, it also is unconstitutional on the basis of Furman v. Georgia in that it allows the jury to make the determination without adequate guidelines of whether a defendant should live or die. It is clear from the above that the defendant entered a guilty plea in fear of the death penalty provision which was unconstitutional. It cannot reasonably be stated that such a plea was made knowingly and intelligently when in fact the defendant gave up valuable constitutional rights, e.g. Fifth Amendment rights, the right to a trial by jury, the right to confrontation of witnesses, in return for nothing since he

would have received the same penalty anyway. The present death penalty provision states unequivocally that if this statute is ever declared unconstitutional, life imprisonment is the appropriate penalty. Therefore at the time the defendant entered the guilty plea, the only penalty which could have been constitutionally imposed was life imprisonment, the same penalty that is imposed for the crime that the defendant plead guilty to.

In Shaw v. U. S. 299 F. Supp. 824 (1969), the defendant was indicted for violation of the Federal Kidnapping Act and plead guilty to avoid the death penalty provision which was subsequently held unconstitutional in U. S. v. Jackson, 390 U. S. 570, The court, in holding that U. S. v. Jackson should be given retroactive effect, stated:

Plea voluntary on its face became involuntary in fact because of the coercive effect of possible capital punishment which should not have confronted the accused in making up his mind how to plead. Life sentence was void and must be vacated." 299 F. Supp. at 833.

The record of the habeas corpus hearing discloses that the defendant's sole reason for pleading guilty was to avoid the death penalty. (R-11). In Armstrong v. Egeler, 389 F. Supp. 483 (1975), the court held that the fact that the defendant was not told he was eligible for parole was a critical factor in determining whether the defendant's guilty plea was intelligently made. The case law is thus clear on the point that knowledge of possible sentencing is a "critical factor" in determining if a guilty plea is intelligently entered. In that the defendant in the instant case entered his guilty plea based upon the misconstrued validity of an unconstitutional

death penalty provision, that plea and the consequent sentence of life imprisonment must be vacated.

## POINT II

THE DEFENDANT WAS DENIED DUE PROCESS OF LAW IN VIOLATION OF BOYKIN V. ALABAMA, 395 U. S. 238, IN THAT THE RECORD BELOW FAILS TO DISCLOSE THAT THE DEFENDANT KNEW HE WAS WAIVING IMPORTANT CONSTITUTIONAL RIGHTS.

In Boykin v. Alabama, supra, the United States Supreme Court set out the requirements for the trial court to adhere to in assuring that the defendant knows that he is giving up specific constitutional rights when he enters a plea of guilty to a crime. The court noted the grave importance of such a requirement:

"Several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth. (Malloy v. Hogan, 378 U.S. 1). Second, is the right to trial by jury. (Duncan v. Louisiana, 391 U.S. 145). Third, is the right to confront ones accusers. (Pointer v. Texas, 380 U.S. 400)." 395 U.S. at 243

The court was explicit on the point that what is required by due process is that the defendant know that he is giving up the above mentioned constitutional rights. The court stated:

"what is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequences." 395 U. S. at 243-244.

The habeas corpus record in the instant case clearly reveals that the defendant did not in fact know of the constitutional rights he was giving up. The defendant specifically stated at the habeas corpus proceeding that he was unaware that if he plead guilty, he would be waiving his right to confront his accusers at trial. (R-10). Surely Boykin v. Alabama requires more than a mere recital of the rights waived by a plea of guilty. Boykin requires that the record below affirmatively disclose that the defendant in fact know that he is waiving those rights. Anything less than this relegates the due process clause to a matter of form rather than substance and renders Boykin v. Alabama meaningless. It is thus clear that the defendant was denied due process under Boykin v. Alabama in that he did not know that he was waiving the right to confront his accusers when he entered his guilty plea.

#### CONCLUSION

The defendant's guilty plea was not knowingly and intelligently made because it was based upon an unconstitutional death penalty provision. Additionally, defendant was denied due process of law in violation of Boykin v. Alabama because the record below does not disclose that defendant in fact knew that he was waiving his right to confront his accusers and therefore the guilty plea was not voluntarily made. For the above-mentioned reasons, defendant's plea of guilty and sentence of life imprisonment should be vacated and a new trial should be granted.

Respectfully submitted,

STEPHEN R. McCAUGHEY

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