

1970

State of Utah v. Louis W. Bonny, Jr. : Brief of Appellant

Utah Supreme Court

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In the Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff-Respondent,

- vs. -

LOUIS W. BONNY, JR.,

Defendant-Appellant

Case No.
12087

BRIEF OF APPELLANT

Appeal from the Judgment of the
Third Judicial District Court for Salt Lake County,
Honorable Aldon J. Anderson, Judge

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In the Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff-Respondent,

- vs. -

LOUIS W. BONNY, JR.,

Defendant-Appellant

Case No.
12087

BRIEF OF APPELLANT

STATEMENT OF NATURE OF THE CASE

The appellant appeals from the denial of his motion to dismiss an information against him because the lower court lacked jurisdiction to proceed with the case pursuant to Utah Code Ann. §77-65-1 (Supp. 1967), the State's Detainer Act, which provides for the disposition of detainers against state prisoners.

DISPOSITION IN THE LOWER COURT

On February 9, 1970, the Third District Court, the Honorable Aldon J. Anderson presiding, denied defendant's motion to dismiss made on the grounds that the

court lacked jurisdiction under Utah Code Ann. §77-65-1 (Supp. 1967), whereupon the case was tried on stipulated facts before the judge without a jury and defendant was found guilty of the crime of escape and was sentenced to an indeterminate term as provided by law; said sentence to run consecutively with a felony commitment.

RELIEF SOUGHT ON APPEAL

Appellant submits that the judgment of 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. Louis W. Bonny, Jr., was committed to the Utah State Prison in 1967 for the crime of burglary in the second degree. (Tr. 25, P1 Exhibit 1). On November 4, 1969, a formal complaint was filed against Mr. Bonny charging him with the crime of escape from the Utah State Prison in violation of Utah Code Ann. §76-50-2 (1953) (R. 5). On November 6, 1969, Mr. Bonny filed with an authorized agent at the Utah State Prison a notice and request of final disposition of this pending charge. (Tr. 21; 22 Defense Exhibit #1) pursuant to Utah Code Ann. §77-65-1 (Supp. 1967).

At arraignment on January 26, 1970, before the Honorable Aldon J. Anderson, Mr. Bonny entered a plea of not guilty and trial was set for February 9, 1970. (R. 14)

On February 9, 1970, Ninety-five days after Mr. Bonny filed the disposition notice, he came before the Third District Court, the Honorable Aldon J. Anderson presiding, for trial. (Tr. 20) The attorney for defendant, made a motion to dismiss for the state's failure to bring defendant to trial within ninety days from the filing of his notice of disposition, as required under §77-65-2. (Tr. 21, 22)

The court denied the motion. (Tr. 23) The trial proceeded on stipulated facts before the judge without a jury and Mr. Bonny was found guilty of the crime of escape. (Tr. 27) He was sentenced on February 24, 1970, by the Honorable Aldon J. Anderson to an indeterminate term as provided by law; said sentence to run consecutively with the previous felony commitment.

ARGUMENT

The trial court erred in refusing to grant defendant's motion to dismiss in that pursuant to Utah Code Ann. §77-65-1 and 2, Utah's Detainer Statute, the court had no jurisdiction to proceed because the state failed to bring the defendant to trial within ninety days of the filing of

defendant's notice and request for disposition of the charge pending against him.

By the terms of the Utah Detainer Statute passed by the Utah State Legislature in 1965, any person serving a prison term with an outstanding, untried indictment, information or complaint against him in the State of Utah, may file a notice requesting disposition of such charges and thereby place the burden of bringing the case to trial on the State or the courts of the State shall lose jurisdiction of such pending charge under §77-65-2. Under the statute, a prisoner need only file written notice of his request for disposition of pending charges with the official having custody over him. Such official must then serve notice of such request to the proper County Attorney and Court pursuant to §77-65-1 (b).

Mr. Bonny complied with the provisions of the statute when he filed notice on John W. Turner, Warden, Utah State prison, via an authorized agent on November 6, 1969. The failure of the State of Utah to bring Mr. Bonny to trial within ninety days deprived the courts of Utah of jurisdiction over the case pursuant to §77-65-2. Therefore, the case should have been dismissed.

In 1969 the Supreme Court of Utah dismissed charges against the appellant in a similar case. Defendant there appealed from a forgery conviction after the state failed to bring him to trial within ninety days

after he filed a notice and request for disposition. The court held that the failure of the defendant appellant to request an earlier setting was immaterial and dismissed the case with prejudice. *State v. Wilson*, 22 Utah 2d 361, 453 P.2d 158 (1969). The court held that the purpose of the Detainer Statute was to carry into effect the constitutional guarantee of a "speedy trial" and to more precisely define what is meant by a "speedy trial." A further purpose of the statute is to prevent law enforcement of officials from holding over the head of a prisoner undisposed charges against him and to try the case while the witnesses are available and their memories are fresh. *State v. Wilson*, *supra*. See *People v. Masselli*, 13 N.Y. 2d 1, 240 N.Y.S. 2d 961, 191 N.E. 2d 457 (1963); *State v. Mason*, 90 N.J. Super, 464, 218 A.2d 158 (1966); *State v. Goetz* 187 Kan. 117, 353 P.2d 816 (1960); *State v. Chirra*, 79 N. J. Super. 270, 191 A.2d 308 (1963), cited with approval in *State v. Wilson*, *supra*.

The case of *State v. Wilson*, *supra* is directly in point with the case of defendant Bonny. Mr. Bonny filed his notice and request for disposition on November 6, 1969. (Defense Exhibit #1) At the arraignment on January 26, 1970, trial was set for February 9, 1970. (R. 14)

Ninety five days after defendant Bonny filed his notice requesting disposition of the pending charge, he was brought to trial, February 9, 1970. Defense Counsel

at that time made a motion to dismiss (R. 15, Tr. 21, 22) based on the court's lack of jurisdiction to proceed because the state had failed to bring the defendant to trial within the ninety day limitation period. The motion was denied by the court. (Tr. 22, R. 15)

Under the statute the state could have asked for a reasonable and necessary continuance if good cause was shown in open court with the defendant and his counsel being present. See *People v. Ross*, 233 N.Y.S. 2d 344 (1962). However, such good cause need be shown in open court and a continuance acquired before the 90 day period lapses. No continuance was requested by the state, nor did the State show any reason why trial could not be held within the 90 day period. The fact that the defendant did not request an earlier setting is immaterial, *State v. Wilson, supra*.

Consequently, by the provisions of Utah Code Ann. §77-65-2 the trial court was without jurisdiction to proceed against Mr. Bonney on February 9, 1970, ninety-five days following his request for disposition. Therefore, the conviction and sentencing of the court below should be reversed and the matter dismissed with prejudice.

CONCLUSION

Because of the state's failure to bring Defendant Bonny to trial within ninety days after the filing of his

request for disposition and the state's failure to show could cause why the trial could not be held before that time within the 90 day period lapsed, the ruling of the lower court should be reversed and the matter dismissed with prejudice.

Respectfully submitted,

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