

1970

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

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.

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE
JUDICIAL DISTRICT COURT IN AND FOR
LAKE COUNTY, STATE OF UTAH,
ALDON J. ANDERSON, JUDGE, PRESIDING.

VERNON B. ROBERTS
Attorney General

LAUREN N. BEACH
Chief Assistant Attorney General

236 State Capitol
Salt Lake City, Utah

Attorneys for Respondent

JOHN D. O'CONNELL
LEGAL DEFENDER
231 East Fourth South
Salt Lake City, Utah 84111

Attorney for Appellant

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Clerk, 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 RESPONDENT

STATEMENT OF NATURE OF CASE

This is an appeal from the judgment of the District Court of the Third Judicial District, in and for Salt Lake County, wherein appellant was found guilty of Escape from the Utah State Prison.

DISPOSITION IN LOWER COURT

The District Court of the Third Judicial District, in and for Salt Lake County, the Honorable Aldon J. Anderson, presiding, denied appellant's motion to dismiss on the grounds that the court lacked jurisdiction, whereupon the case was tried on stipulated facts without a jury. Appellant

was found guilty of the crime of Escape, and was sentenced as provided by law.

RELIEF SOUGHT ON APPEAL

Respondent submits that the judgment of the trial court should be affirmed.

STATEMENT OF FACTS

Respondent is in agreement with the Statement of Facts as set forth in appellant's brief with the following additions and clarifications.

At arraignment on January 26, 1970, the prosecuting attorney requested that the case be set for trial on January 28, 1970, which date was within ninety days from the day appellant requested final disposition of the matter pending against him.

Defense counsel was unable to accept the suggested date. Upon inquiry by the court as to when the next most available time was, both attorneys indicated that the 9th of February, 1970, was alright. The court then ruled that the matter "[m]ay be set for the 9th of February." (Arraignment T. 3).

Thus, prosecutor did request a trial date, which date was within the ninety day period. Defense counsel was not able to accept the date. The court, with the approval of both defense counsel and prosecutor, set the trial for February 9, 1970, which date was only five days beyond the ninety day period.

ARGUMENT

POINT I.

THE TRIAL COURT HAD JURISDICTION BEYOND NINETY DAYS FROM FILING OF REQUEST FOR FINAL DISPOSITION AND DID NOT ERR IN CONVICTING AND SENTENCING APPELLANT, IN THAT PURSUANT TO UTAH CODE ANN. § 77-65-1 (SUPP. 1969), THE COURT GRANTED A NECESSARY AND REASONABLE CONTINUANCE FOR GOOD CAUSE.

The issue in case at bar falls within the Utah Detainer Act which provides in part:

“Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever during the continuance of the term of imprisonment there is pending in this state any untried indictment, information or complaint against the prisoner, he shall be brought to trial within ninety days after he shall have caused to be delivered to the county attorney of the county in which the indictment, information or complaint is pending and the appropriate court written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: *provided, that for a good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. . . .*” Utah Code Ann. § 77-65-1(a) (Supp. 1969). (Emphasis added.)

“In the event that the action is not brought to trial within the period of time as herein provided, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.” Utah Code Ann. § 77-65-2 (Supp. 1969).

The Utah Supreme Court has ruled that the legislature, by passing these statutes, intended to put the burden of compliance upon the prosecutor. *State v. Wilson*, 453 P. 2d 158, 22 U. 2d 361 (1969).

In case at bar, the prosecutor attempted at arraignment to set the case for trial at a date within the ninety day limit, but defense counsel was not able to accept the date. The earliest date convenient for both attorneys was a date five days beyond the ninety day limit, but a date which the court established after hearing the requests and considering circumstances of both the defense counsel and the prosecutor.

Respondent submits that the continuance to a date five days beyond the ninety day period was reasonable and necessary, and was based upon good cause shown in open court. Therefore, the facts are within the statutory provisions allowing extension of time, and the court had jurisdiction to try the matter 95 days after appellant's request for final disposition.

Appellant contends that the case at bar is on all fours with *State v. Wilson*, *supra*. (Appellant's Brief at 5.) The case at bar is *not* on all fours with *Wilson*, and is easily

distinguished in that in case at bar prosecutor requested that the case be set for trial at a date within the ninety day period; whereas, in *Wilson* the prosecutor requested a date beyond the ninety day period.

The purpose of the statute involved in case at bar, is “to more precisely define what is meant by ‘speedy trial’ as that term is used in the constitutions of the various states.” *State v. Wilson, supra*, at 363.

The United States Supreme Court:

“... has consistently been of the view that ‘[t]he right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.’ [citation omitted.] ‘Whether delay in completing a prosecution . . . amounts to an unconstitutional deprivation of rights depends upon the circumstances . . . The delay must not be purposeful or oppressive.’ [citation omitted.] ‘[T]he essential ingredient is orderly expedition and not mere speed.’” *United States v. Ewell*, 383 U. S. 116, 120 (1966).

The reasoning of the United States Supreme Court concerning speedy trial may be applied to case at bar. Circumstances justified continuance; announcement by appellant of his inability to accept prosecutor’s original requested date for trial justified continuance to a reasonable date. No rights of appellant were prejudiced. The delay was not purposeful or oppressive. There was orderly expedition. The court’s decision to set the date five days beyond the ninety day period was reasonably made and was in com-

pliance with the appropriate statute. The facts fall well within the constitutional standard of right to a speedy trial, the Utah statute, and do not fall contrary to Utah case law.

The continuance granted in case at bar resulted in no prejudice to appellant, and was not an abuse of the court's discretion.

Where arraignment proceedings were conducted within the ninety day period and prosecution attorney attempted to set trial date within the ninety day period, but defense counsel was unable to accept suggested date, the court was acting well within the statutory limits in setting the date for trial five days beyond the ninety day limit, because no earlier date was convenient to both attorneys.

Furthermore, the above argument is based upon the assumption that the ninety day period began running on November 6, 1969, when an agent of Utah State Prison received notice and request for disposition of pending charges. According to the decision of a recent Utah case, request is premature if it is submitted prior to time information is filed. *State of Utah v. Belcher*, Case No. 12077, filed September 29, 1970. The information in case at bar was filed January 23, 1970, and trial was held February 9, 1970. Therefore, trial was within the ninety day period.

CONCLUSION

The continuance was granted pursuant to the statute. The court had jurisdiction at the time it passed judgment upon appellant. The respondent submits that neither appellant's statutory or constitutional rights were violated, and therefore, the trial court's judgment should be affirmed.

Respectfully submitted,

VERNON B. ROMNEY
Attorney General

LAUREN N. BEASLEY
Chief Assistant Attorney General

Attorneys for Respondent