

1971

State of Utah v. Dennis Parker : Petition For Rehearing

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errorsVernon B. Romney; Attorney for respondents

Recommended Citation

Petition for Rehearing, *Utah v. Parker*, No. 12253 (Utah Supreme Court, 1971).
https://digitalcommons.law.byu.edu/uofu_sc2/217

This Petition for Rehearing is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE

STATE OF UTAH,

Plaintiff-Respondent

VS. PARKER,

Defendant-Appellant

PETER

Appeal from

Third District

Salt Lake County

Honorable

JOHN B. ROMNEY

Attorney General, State of Utah

State Capitol Building

Salt Lake City, Utah

Attorney for Respondent

TABLE OF CONTENTS

	<u>Page</u>
ARGUMENT	
THE COURT ERRED IN FAILING TO CON- SIDER APPELLANT'S ARGUMENT THAT THE MAXIMUM SENTENCE WHICH MAY BE IM- POSED SHOULD BE THAT SENTENCE SPECI- FIED IN 58-37-8 (b) (ii), and 58-37-18, UCA (1953) (Supp. 1971)	1
CONCLUSION	3

AUTHORITIES CITED:

<u>Belt v. Turner</u> , 25 Utah 2d 230, 479 P.2d 791 (1970), on reh. 25 Utah 2d 384, 483 P.2d 425..	3
<u>Pleasant Grove City v. Lindsay</u> , 41 Utah 154, 161, 125 P. 389 (1912)	3
<u>State v. Conover</u> , 502 P. 2d 552, _____ Utah 2d _____ (1972)..	2
<u>State v. Tapp</u> , 26 Utah 2d 392, 490 P.2d 334 (1971)	2

STATUTES CITED:

<u>Utah Code Ann.</u> (1953)	
58-33	1, 2
<u>Utah Code Ann.</u> (1953) (Supp. 1971)	
58-37	1
58-37-8 (b) (ii)	1
58-37-18 (1) (a)	1, 2

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,)
Plaintiff-Respondent,)
vs.) Case No. 12253
DENNIS PARKER,)
Defendant-Appellant.)

PETITION FOR RE-HEARING

ARGUMENT

THE COURT ERRED IN FAILING TO CONSIDER APPELLANT'S ARGUMENT THAT THE MAXIMUM SENTENCE WHICH MAY IMPOSED SHOULD BE THAT SENTENCE SPECIFIED IN 58-37-8 (b) (ii) and 58-37-18, UCA (1953) (Supp. 1971).

This Petition for Re-Hearing is brought on behalf of appellant Dennis Parker only. Appellant's sole contention is that the Supreme Court should have considered the effect of the repeal of § 58-33, the so-called drug abuse control act under which appellant was convicted and sentenced. During the time that this appeal was pending, the Utah Legislature repealed that act and replaced it with § 58-37, UCA (1953) (1971), effective January 1, 1972. This Court has con-

sidered the meaning of § 58-37-18 (1) (a), in the case of State v. Conover, 502 P. 2d 552, _____ Utah 2d _____ (1972). Appellant submits that Conover should be controlling in the determination of this case. The Court stated therein in construing a portion of § 58-37-18 (1) (a)"provided that sentences imposed after the effective date of this act may not exceed the maximum terms specified and the judge has discretion to impose any minimum sentence." Further on in the opinion the Court stated: "This language is clear and unambiguous. The defendant can be prosecuted for his criminal acts, if any, committed prior to January 1, 1972, and the only effect of a new act is to serve as a limitation on the penalty to be inflicted for violating the old law."

This Court has also stated that where the Legislature changes the law favorable to an accused, that under certain circumstances the accused is entitled to the favorable change in the law. See State v. Tapp, 26 Utah 2d 392, 490 P.2d 334 and cases cited therein. Where the Legislature has expressed the intent to lessen the penalty modern and advanced principles of jurisprudence should try and give effect to the lesser sentence.

Belt v. Turner, 25 Utah 2d 230, 479 P.2d 791
(1970), on reh. 25 Utah 2d 384, 483 P.2d 425.

Appellant further submits that it has long been generally held that: "If a penal statute is repealed pending an appeal and before the final action of the appellate court, it will prevent an affirmance of the conviction and the prosecution must be dismissed and judgment reversed. A final judgment before repeal is not affected by it." Pleasant Grove City v. Lindsay, 41 Utah 154, 161, 125 P. 389 (1912), citing from 1 Lewis' Sutherland Stat. Constr. (2d Ed.) § 286.

CONCLUSION

On the basis of the foregoing argument and authority, appellant Dennis Parker respectfully urges the Court to remand this matter for re-sentencing by the District Court.

Respectfully submitted,

JOHN D. RUSSELL
252 Canyon Road
Salt Lake City, Utah
Attorney for Appellant