

1976

Utah v. Dale S. Pierre : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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IN THE SUPREME COURT
OF THE STATE OF UTAH

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J. Reuben Clark Law School

STATE OF UTAH,

Plaintiff-Respondent,

vs.

DALE S. PIERRE,

Defendant-Appellant.

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No. 13903

AMENDED BRIEF OF APPELLANT

Appeal from the Second Judicial District in and
for Davis County, State of Utah, the Honorable John F.
Wahlquist, Presiding.

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FILED

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IN THE SUPREME COURT
OF THE STATE OF UTAH

STATE OF UTAH, :
Plaintiff-Respondent, :
vs. : No. 13903
DALE S. PIERRE, :
Defendant-Appellant. :

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I.

THE UTAH STATUTES REIMPLEMENTING THE DEATH PENALTY
DO NOT MEET THE REQUIREMENTS SET FORTH IN GREGG V. GEORGIA,
PROFFITT V. FLORIDA, AND JUREK V. TEXAS.

The United States Supreme Court has declared that
direct review by Appellate Courts of the appropriateness of
each death sentence case is a crucial procedure which must be
employed in any capital punishment scheme in order to satisfy
the requirements of Furman v. Georgia.¹

In these cases, the Supreme Court reaffirmed the
principles first announced in Furman v. Georgia, 408 U.S. 238
(1972). As Justice Stewart stated in Gregg v. Georgia:

"Furman mandates that where discretion is afforded
a sentencing body on a matter so grave or the deter-
mination of whether a human life should be taken or
spared, that discretion must be suitably directed
and limited so as to minimize the risk of wholly
arbitrary or capricious action." 96 S. Ct. at 2932.

In Gregg v. Georgia, Justice Stewart, in announcing
the judgement of the court, stated that because of the uniqueness
of the death penalty, it cannot be imposed under any sentencing
procedure that creates a substantial risk that it may be inflicted
in an arbitrary or capricious manner. In reviewing the capital
penalty statute of the State of Georgia, the court, at several

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1. Gregg v. Georgia, ____ U. S. ____, 96 S.Ct. 2909 (1976);
Proffitt v. Florida, ____ U. S. ____, 96 S.Ct. 2960 (1976);
Jurek v. Texas, ____ U. S. ____, 96 S.Ct. 2950 (1976);
Woodson v. North Carolina, ____ U. S. ____, 96 S.Ct. 2978 (1976)
Roberts v. Louisiana, ____ U. S. ____, 96 S. Ct. 3001 (1976).

points in the opinion, emphasized the function of the special expedited direct review of capital cases which was followed by the Georgia Supreme Court. A plurality of the Justices acknowledged that these special review procedures constituted an important additional safeguard to check the possibility² of the random or arbitrary imposition of the death penalty.

Under the law of Georgia, the appellate court is required by statute to automatically review each sentence of death and determine whether it was imposed under the influence of passion or prejudice, whether the evidence supports the jury's finding of a statutory aggravating circumstance, and whether the sentence is disproportionate compared to sentences³ imposed in similar cases. The Georgia Supreme Court in Coley v. State, 231 Ga. 829, 204 S. E. 2d 612 (1974) has held that a death sentence will be set aside on the appellate level if excessive in light of comparative sentences imposed for similar cases.

The Court placed great emphasis on the ability of the Georgia Supreme Court to determine in each case whether the death sentence is excessive or disproportional. As Justice Stewart stated:

"The proportionality review substantially eliminates the possibility that a person will be sentenced to die by the action of an aberrant jury. 96 S. Ct. 2940."

2. See the concurring opinion of Justice White, with whom the Chief Justice and Mr. Justice Rehnquist joined.

3. Georgia Code Ann. Section 27-2537(c) (Supp. 1975).

In Proffitt v. Florida, the death penalty statute of Florida provides for sentencing in all cases by the trial judge instead of a jury and required automatic review by the Supreme Court of Florida of all death sentence cases.⁵ The trial judge, not the jury, in sentencing under Florida's system must justify the imposition in every case of the death sentence with written findings to the State Supreme Court. In State v. Dixon, 283 So. 2d 1 (1973), the Florida Supreme Court held that they had the duty on appellate review of capital cases that went beyond the scope of review in other criminal cases. The court stated that Supreme Court review should guarantee that aggravating and mitigating reasons present in one case lead to a similar result to that reached under similar circumstances in another case and the appellate court must determine whether or not the punishment of death in any individual case is too great.

The United States Supreme Court in upholding the Florida death penalty scheme under Furman placed great emphasis on these review procedures. The Court stated that the conscientious review by a court with state-wide jurisdiction

4. Supra., Page 1.

5. Fla. State. Ann., Sec. 921.141(4) (Supp. 1976-1977).

would assure the consistency, fairness, and rationality that would prevent the imposition of the death sentence in an arbitrary or capricious manner. The Court noted that because the procedure developed by the Florida court, the Florida court had in effect adopted the type of proportionality review mandated in the Georgia statute at issue in Gregg.⁶

In Texas, the conviction of death is subject to automatic review by the Texas Court of Criminal Appeals.⁷ In Smith v. State,⁸ the Court of Appeals of Texas examined carefully the death sentence imposed in that case as to the appropriateness of its imposition in light of the prior history of the defendant. In Jurek v. Texas the Supreme Court found that the Texas appellate procedure provided means which would promote the evenhanded, rational, and consistent imposition of the death penalty in that state.

In Woodson v. North Carolina, supra, the United States Supreme Court held that the death sentence as applied in North Carolina was unconstitutional because the mandatory death penalty system violated the Eighth and Fourteenth Amendments. An important factor in this decision by the court was the absence in North Carolina of the proper appellate review process. In North Carolina the court found that neither

6. Proffitt v. Florida at 96 S. Ct. 2960 (1976).

7. Texas Code of Criminal Procedure Article 37.071 (1973).

8. No. 49,809 (Feb. 18, 1976).

at the trial or appellate level could the judiciary check the arbitrary and capricious exercise of the sentencing⁹ in death penalty cases.

The Utah statutes, Utah Code Annotated 76-3-206 and 76-3-207 (Supp. 1975) do not outline an appellate review process which meets the requirements of the Eighth and Fourteenth Amendments to the United States Constitution. Under the scope of review employed in the State of Utah in criminal cases, this court has no means to promote the evenhanded, rational, and consistent imposition of the death penalty on a statewide basis. Furthermore, the appeal procedure in Utah is discretionary, not mandatory and automatic as in each of the three cases before the Supreme Court.

Therefore, the sentence of the appellant imposed under their capital punishment statutory scheme is unconstitutional and should be reversed.

9. See also, Roberts v. Louisiana, supra, at 96 S. Ct. 3007 re appellate review.

II.

POINT II. THE DEATH PENALTY IS UNCONSTITUTIONAL
UNDER THE FOURTEENTH AMENDMENT BECAUSE
IT DOES NOT SERVE A COMPELLING STATE
INTEREST WHICH COULD NOT BE FULFILLED
BY A LESS DRASTIC MEANS

The appellant hereby incorporates Point II of
original brief.

III.

POINT III. APPELLANT'S DEATH SENTENCE WHICH
IS UNCONSTITUTIONAL SHOULD BE REVERSED,
AND PURSUANT TO UTAH CODE ANNOTATED
76-3-207 (4) SHOULD BE REMANDED TO
THE TRIAL COURT FOR THE APPELLANT TO
BE SENTENCED TO LIFE IMPRISONMENT

The appellant hereby incorporates Point III
of original brief.

AMENDED IV

A) THE SENTENCE OF DEATH SHOULD BE REVERSED BECAUSE THE SENTENCE IN THIS PARTICULAR CASE IS DISPROPORTIONATE AND EXCESSIVE IN RELATION TO THE OFFENSE FOR WHICH THE DEFENDANT WAS CONVICTED AND THE DEFENDANT'S INVOLVEMENT IN THAT OFFENSE.

B) THE APPELLANT'S SENTENCE OF DEATH SHOULD BE REVERSED BECAUSE THE EVIDENCE DOES NOT SUPPORT THE TRIAL JUDGES IMPOSITION OF THE DEATH PENALTY.

The appellant submits that if the court should find that the death penalty statute in Utah is not per se unconstitutional, the aforementioned recent decisions by the Supreme Court require that this court exercise the type of special, direct review of death penalty cases specified by the Supreme Court.

As outlined in Amended Point I of this brief, a mandatory, special, direct review of the appropriateness of each individual death sentence is a crucial procedure that must be employed to satisfy the Eighth and Fourteenth Amendments.

Paragraph (3) of Utah Code Annotated 76-3-207 (Supp. 1975) provides:

"Upon any appeal by the defendant where the sentence is of death, the supreme court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of death and remand the case to the trial court, in which event the trial court shall impose the sentence of life imprisonment."

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Under the above quoted section, this court has the ability to exercise the obligation placed upon state appellate courts by the United States Supreme Court to assure that the death penalty in Utah is not inflicted in an arbitrary or capricious manner. By reviewing each case in which the penalty of death is imposed, this court can determine whether in fact the sentence of the individual defendant is or is not disproportional to the offense committed. In each case the court should review the sentence in light of the circumstances of the crime, the aggravating and mitigating factors present, and other sentences for similar crimes. The court by employing "proportionality review" can substantially eliminate the possibility that a person will be sentenced to die by the action of an arbitrary or capricious manner.

This court also has the duty to carefully review the entire trial and sentencing procedure of each death penalty case and to reverse the death sentence if any prejudicial error is found by the court in any phase of the trial. As the United States Supreme Court stated in Gregg:

"There is no question that death as a punishment is unique in its severity and irrevocability... When a defendant's life is at stake, the court has been particularly sensitive to insure that every safeguard is observed. 96 S.Ct. at 2932.

The Utah Supreme Court has traditionally employed a special review standard in capital cases. State v. Riley, 41 Utah 2d 225, 126 P. 294 (1911); State v. Stenback, 78 Utah 350, 2 P. 2d 1050 (1931); State v. Russell, 106 Utah 116, 145 P.

2d 1003 (1944); and State v. Materi, 119 Utah 143, 225 P. 2d 325 (1950). In these cases the court has held that it has a duty to review the entire record that does not exist in ordinary criminal appeals, and will raise questions of error on its own motion. In State v. St. Clair, 3 Utah 2d 230, 282 P. 2d 323 (1955) this court said:

"Under such circumstances (a capital case) it is our duty to scrutinize with care the propriety of all aspects of the proceedings. at 332."

The court expressed this concept again in State v. Poe, 21 Utah 2d 113, 441 P. 2d 512 (1968) in another manner in reversing one defendant's death sentence:

"... with the defendant's life at stake, this court should not hazard a guess. The [evidence at issue] could very well have tipped the scales in favor of the death penalty" at 515.

In light of the foregoing standards of review the appellant submits: (1) That the penalty of death in appellant's case is disproportionate and excessive in relation to the offense which the defendant was convicted and the defendant's involvement in the offense; (2) The evidence introduced at the trial and hearing and sentence does not support the sentence of death in light of the mitigating factors present in appellant's case.

Therefore, the court should reverse the judgement of the lower court and either remand the case for retrial or set aside the death penalty.

V THROUGH XI

The appellant incorporates Points V, VI, VII, VIII, IX, X and XI from the original Brief.

XII.

THE FAILURE OF THE TRIAL JUDGE TO APPLY THE STANDARD OF PROOF BEYOND A REASONABLE DOUBT IN THE APPELLANT'S HEARING ON SENTENCE VIOLATED THE DUE PROCESS CLAUSE OF THE UTAH AND UNITED STATES CONSTITUTIONS.

The United States Supreme Court has recently held that the prosecution must prove beyond a reasonable doubt the absence of any defense which may mitigate the degree of homicide. In Mullaney v. Wilbur, 421 U.S. 684 (1975) the Court ruled that the Due Process Clause of the Fourteenth Amendment requires that the prosecution prove beyond a reasonable doubt the absence of the element of heat of passion on sudden provocation when the element is properly presented in a criminal case. In that case, the question involved the law of the State of Maine which required the defendant to establish by a preponderance of evidence that he acted in the heat of passion to reduce the crime from murder to manslaughter. The ruling was founded on the fundamental concept that the reasonable doubt standard in criminal cases ". . . is the traditional burden which our system of justice deems essential." at 702.

The Mullaney decision was an extension of the doctrine first developed in the case of In re Winship, 397 U.S. 364 (1970), which required that the prosecution prove beyond a reasonable doubt every fact necessary to constitute the crime charged. The State of Maine argued

in Mullaney that the Winship doctrine should not be extended in the case before the Court because the absence of the heat of passion on sudden provocation is not a fact necessary to constitute a crime.

The Supreme Court rejected this distinction and stated that the State had chosen to distinguish in homicide cases between those who kill in the heat of passion and those who kill in the absence of this mitigating factor. The requirement of proof beyond a reasonable doubt was found by the Supreme Court to apply not only when guilt or innocence is in issue but also when the degree of culpability is to be determined. The Court said:

"The safeguards of due process are not rendered unavailable simply because a determination may have already have been reached that would stigmatize the defendant and that might lead to a significant impairment of personal liberty." at 698.

The Court recognized that potential difference in the restrictions of personal liberty which are involved in the punishments attendant to different degrees of the same crime may be greater than the potential deprivation of personal liberty involved when the issue is guilt or innocence in many lesser crimes.

In death penalty cases, where the scales can be tipped in favor of either the life or death of the defendant, the potential for the deprivation of personal liberty by the State is substantial. No greater impairment of an

individual's rights exists which is more drastic than the penalty of death. The safeguards of due process and the reasonable doubt standard must, a fortiori, apply when the death penalty is involved in the homicide.

Under the Utah Law, the determination of whether the defendant will be punished by death or by life imprisonment depends upon whether the penalty of death is mitigated by any of the seven statutory enumerated circumstances which the judge or jury must consider in their decision. Utah Code Annotated 76-3-207 (Supp. 1975). The appellant contends that the prosecution has the burden to prove beyond a reasonable doubt the absence of any mitigating factor which the defendant raises in the sentencing proceedings. If this burden is not placed on the State then the consequence of death can be imposed if the trier of fact finds that the evidence of the aggravating circumstances preponderates over the evidence of the mitigating factors.

In the case before the Court, the trial judge instructed the jury during the penalty phase of the trial as follows:

"There is no fixed standard as to the degree of persuasion needed for a particular sentence, as the law leaves that consideration to the jury, but the burden of proof to satisfy the jury that a death sentence is appropriate is on the State. (T. 4273)

The trial court did not even instruct the jury that they must bring back the death sentence only upon a finding

based upon the preponderance of the evidence.

The appellant submits that the trial judge's failure to apply the traditional reasonable doubt standard to the determination of whether or not the death penalty would be imposed violated the Due Process Clause of the Fourteenth Amendment and the Due Process Clause of the Utah Constitution, Article I, Section 7.

CONCLUSION

On the basis of the foregoing Points, the appellant respectfully submits that the judgment rendered at trial be reversed and the case remanded to the trial court for the purpose of a new trial, or that, in the alternative, this Court should order that appellant's sentence of death be set aside, and direct the trial court on remand to impose the sentence of life imprisonment.

Respectfully submitted,

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