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The State of Utah v. Juan P. Jaramillo : Defendant-Appellants Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,

Plaintiff-Respondent,

vs.

JUAN P. JARAMILLO,

Defendant-Appellant.

Case No.
12259

DEFENDANT-APPELLANT'S BRIEF

Appeal from Appellant's conviction of robbery in violation
of Section 76-51-1, Utah Code Annotated (1953) in the
Third District Court for Salt Lake County.
Honorable Aldon J. Anderson, presiding.

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STATEMENT OF KIND OF CASE

Appeal from Appellant's conviction of robbery in violation of Section 76-51-1, Utah Code Annotated (1953) in the Third District Court for Salt Lake County, Honorable Aldon J. Anderson, presiding.

DISPOSITION IN THE LOWER COURT

After Appellant was released by federal habeas corpus from the commitment of his first prosecution, he

was retried before a jury for the crime of robbery. He was found guilty on June 3, 1970, and sentenced on June 30, 1970, to an indeterminate term as provided by law for the crime of robbery.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the judgment entered by the lower court and a new trial with instructions to allow the jury to make a finding of fact as to if Appellant should be acquitted on grounds of former jeopardy.

In the alternative, Appellant seeks a remand of the case to the lower Court with instructions that the commitment be modified to give credit for all time Appellant has been incarcerated since his arrest.

STATEMENT OF FACTS

On November 27, 1967, Appellant was arrested on the charge of robbery. Appellant is indigent, and being unable to raise bail at any time, he has been in continuous incarceration since November 27, 1967. He originally entered a plea of not guilty, but his impatience overcame his desire to litigate the issue of his innocence when it became apparent to him that the State was denying him his right to a speedy trial and he was spending "dead time" in the County Jail for which he anticipated no credit if convicted. On February 13, 1968, Appellant therefore changed his plea to guilty and waived time for

passing of sentence, whereupon judgment and sentence were pronounced.

On April 23, 1970, the Honorable A. Sherman Christensen, Judge in the United States District Court for the District of Utah, Central Division, granted Appellant's petition for Writ of Habeas Corpus on the grounds that his plea of guilty had not been an intelligent and voluntary waiver of his constitutional rights.

Appellant was subsequently retried for the same offense of robbery before the Honorable Aldon J. Anderson, Third District Court for Salt Lake County, the Court from which the present appeal is being made. At this second prosecution, Appellant entered pleas of not guilty and former jeopardy. In connection with his defense of former jeopardy, Appellant wished to present evidence to the effect that he had been incarcerated in excess of 30 months as a consequence of the charge for which he was being tried; that 27½ months had been spent in state prison; and that as a practical matter, such periods of time approach the minimum time served for convictions for robbery. Over Appellant's exception, the trial judge did not allow Appellant to present this evidence and refused to submit the issue of former jeopardy to the jury.

The jury returned a verdict of guilty, and Appellant was subsequently sentenced to an indeterminate term as provided by law for the crime of robbery.

POINT I

THE TRIAL JUDGE ERRED IN DENYING APPELLANT THE RIGHT TO SUBMIT EVIDENCE OF FORMER JEOPARDY AND IN FAILING TO INSTRUCT THE JURY ON THE ISSUE OF FORMER JEOPARDY.

The Utah Constitution, Article I, Section 12, provides that no person shall "be twice put in jeopardy for the same offense." This same right is provided by statute, 77-1-10, Utah Code Annotated (1953).

The prohibition against double jeopardy is guaranteed by the Fifth Amendment of the United States Constitution. Fifth Amendment double jeopardy standards are enforceable against the states through the Fourteenth Amendment. *Benton vs. Maryland* 395 U.S. 784 (1969).

Double jeopardy does not generally act as an absolute bar to the retrial of a defendant who successfully attacks his first prosecution. The rationale for this principle ". . . rests ultimately upon the premise that the original conviction has, at the defendant's behest, been wholly nullified and the slate wiped clean. As to whatever punishment has actually been suffered under the first conviction, that premise is, of course, an unmitigated fiction . . ." *North Carolina vs. Pearce*, 395 U.S. 711, at 721 (1969).

Thus, the fiction of waiver might not infringe on a defendant's constitution right if it operates to waive the

jeopardy defense only in the context of prosecution. But to the extent punishment, as opposed to prosecution, constitutes jeopardy, even the most callus individual would have trouble digesting the notion that 30 months of incarceration can be wiped off the slate by the granting of a new trial.

The Fifth Amendment concept of jeopardy includes the imposition of punishment as well as subjection to prosecution. *Ex parte Lange*, 18 Wall. 163 (1873).

The holding in *Pearce*, *supra* and *infra*, clearly demonstrates that the slate is not “wiped clean” to the extent that punishment has already been exacted, and the right to a crediting for such punishment is not waived when a defendant seeks release from the commitment of a first prosecution.

An issue of fact arises upon a plea of once in jeopardy. 77-27-1 (3), Utah Code Annotated (1953). Issues of fact must be tried by the jury. 77-27-2, Utah Code Annotated (1953).

Since the time served by Appellant prior to his second prosecution constituted jeopardy, and since he did not waive his right to the defense of former jeopardy, the trial court erred in disallowing evidence of former jeopardy and in not submitting the issue to the jury.

POINT II

THE TRIAL COURT ERRED IN IMPOSING THE INDETERMINATE STATUTORY PENALTY FOR ROBBERY, WITHOUT GIVING CREDIT IN THE COMMITMENT FOR THE TIME ALREADY SERVED BY APPELLANT

In *North Carolina vs. Pearce*, 395 U.S. 711 (1969) petitioner was convicted of assault with intent to rape and sentenced to a prison term of 12 to 15 years. Several years later his conviction was reversed on the ground of the unconstitutional use of his confession. He was retried, convicted, and sentenced to eight years, which when added to the time he had already served amounted to a longer sentence than imposed at his first trial. The case reached the United States Supreme Court through a federal habeas corpus proceeding which Pearce initiated.

The Supreme Court held that the “constitutional guarantee against multiple punishments for the same offense absolutely requires that punishment already exacted must be fully ‘credited’ in imposing sentence upon a new conviction for the same offense.” 395 U.S. at 718-19.

Pearce requires that time served be credited when imposing sentence. In terms of the opinion of the court in *Pearce*, multiple punishment is exacted “whenever punishment already endured is not fully subtracted from any new sentence imposed.” 395 U.S. at 718.

Appellant further contends that under the Equal Protection Clause of the Fourteenth Amendment, credit must also be given Appellant for the time prior to his first prosecution, spent in county jail because of his inability to meet the bail set. If time is not credited to Appellant for the two and one-half months spent in county jail awaiting trial, then he is being discriminated against on the basis of his financial inability to post bail.

Appellant's argument is supported by *Williams* vs. *Illinois*, 399 U.S. 235 (1970). In *Williams* the United States Supreme Court held that where a fine is imposed in addition to a maximum sentence, it is a violation of the Equal Protection Clause of the Fourteenth Amendment to imprison a convicted defendant beyond the period of the original sentence by reason of his inability to pay the fine.

Williams is distinguishable from the instant case in that *Williams* involved tacking time on to the end of a maximum sentence, rather than on the beginning of an indeterminate sentence, and dealt with the payment of fines, not bail. But neither of these distinguishable facts can rationally distinguish the underlying policy in *Williams* as applied to Appellant's situation.

The determinative factor in *Williams* is that different consequences were being imposed on different defendants based on their financial ability. This same factor is present in the instant case.

In fact, there is an element present in Appellant's

case which makes the law even more discriminating toward Appellant than the appellant in *Williams*. If a convicted defendant pays a fine to avoid the extension of imprisonment beyond the maximum sentence, that defendant has given up something and to some extent is on a common footing with the indigent who is forced into extended incarceration by reason of inability to pay the fine. Where a maximum sentence has been imposed, *Williams* held that such a common footing is not sufficient to avoid a violation of equal protection. A fortiori there is a violation of equal protection where a defendant who is unable to make bail is not allowed credit toward his commitment for time spent in county jail, for in this case the class of people who are able to make bail may get by with giving up nothing but the use of their bail money until it is refunded upon their appearance.

CONCLUSIONS

The trial judge erred in not allowing Appellant to offer evidence of the extent of his former jeopardy and in not submitting the issue of jeopardy to the jury. This error was prejudicial since it precluded Appellant from asserting a defense guaranteed him by the Fifth and Fourteenth Amendments of the United States Constitution and by the Utah Constitution and the statutes of Utah.

The trial judge violated Appellant's Fifth and Fourteenth Amendment rights when he imposed the

statutory indeterminate sentence without crediting Appellant for time served.

Respectfully submitted,

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