

1971

## Robert Gonzales v. John W. Turner, Warden, Utah State Prison : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE

STATE OF UTAH

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ROBERT GONZALES,

Plaintiff-Appellant,

-vs-

JOHN W. TURNER, Warden,  
Utah State Prison,

Defendant-Respondent.

Case No. 12262

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BRIEF OF APPELLANT  
-----

An Appeal From the Judgment of the  
Third Judicial District Court of  
Salt Lake County, the Honorable  
Bryant H. Croft, Judge  
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BRIEF OF APPELLANT  
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STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a memorandum decision and order of the District Court of the Third Judicial District of Utah, denying petitioner a writ of habeas corpus.

DISPOSITION OF THE CASE BELOW

On August 28, 1970, a hearing was held in the District Court for the Third Judicial District of Utah, on the petition for writ of habeas corpus filed by the petitioner, Robert Gonzales. On September 16, 1970, the District Court, in a memorandum decision and order, denied the petition for writ of habeas corpus.

## RELIEF SOUGHT ON APPEAL

Petitioner seeks reversal of the District Court's judgment denying his petition for habeas corpus with instructions to the trial court to grant the writ, or in the alternative for a new trial.

### STATEMENT OF FACTS

Petitioner, Robert Gonzales, is currently incarcerated at the Utah State Prison. His incarceration is the result of a guilty plea to the crime of grand larceny entered in the Third District Court on March 1, 1969. (R. 14) (Findings - 37)

Mr. Gonzales was originally charged with grand larceny and third degree burglary in a complaint filed April 8, 1968. (R. 32) (Findings - 8). He was represented on those charges by Mr. David Bown, member of the Legal Defender's Association (R. 8). Following the preliminary hearing, the grand larceny count was dismissed and he was bound over to the District Court on the burglary charge. (R. 38) (Findings - 9)

An information was filed on May 17, 1968 on the burglary charge to which Mr. Gonzales pled not guilty. On August 15, 1968, the information was dismissed and a new complaint was filed again charging him with

grand larceny and third degree burglary in connection with the offense he had allegedly committed in April. (R. 38, 39) (Findings - 9)

On August 16, 1968, petitioner was arraigned on the grand larceny and third degree burglary charges and David Bown again represented him. A preliminary hearing was had on March 3, 1969, with John O'Connell of the Legal Defender's Office appearing as counsel, Mr. Bown having previously terminated his association with that office. (R. 33) And on March 27, 1969, an information was filed charging Mr. Gonzales with grand larceny and third degree burglary (R. 32,38,39) (Findings - 9, 10).

On March 28, 1969, petitioner was arrested on a warrant issued March 22, 1969, in the City Court charging him with grand larceny for allegedly stealing a suit (R. 21) (Findings - 10).

On March 28, 1969, petitioner was "loaded" on heroin. (R. 23) He has been addicted to heroin since 1946 (R. 20) and had gone through withdrawal on three different occasions. (R. 28) On the day of his arrest, petitioner had his last "fix", or injection of heroin, at about 7:00 A.M. (R. 30) (Findings - 10).



Following his arrest, Mr. Gonzales was taken to the City Court for arraignment on the grand larceny charge. While waiting for arraignment he conversed with David Bown who no longer represented him but had done so on the prior grand larceny and burglary charges dating from April, 1968. Petitioner told Mr. Bown that he was under arrest for theft of suits and he asked Mr. Bown if he (Mr. Bown) could get him (petitioner) "upstairs" (the District Court) to plead guilty to the other charge, i.e., the prior grand larceny charge originally filed in April of 1968. Mr. Bown had represented the petitioner on the prior charge and thought that the case "was a winner". (R. 52) Further, he said that the District Attorney had no new facts and that petitioner was "crazy if . . . (he) pled guilty to that charge." (R. 54, 37) However, petitioner said he just wanted to get it over with so he could get some help because they couldn't give him anything in the jail. (R. 37) Findings - 10).

On the day of his arraignment, Mr. Gonzales' eyes were watering, his nose was running and he appeared, to Mr. Bown, to be in pain. (R. 36) Findings - 10).

Following his arraignment, Mr. Gonzales was confined to the Salt Lake County Jail, and on March 29, 1969, he began to experience the symptoms of withdrawal, i.e., sweating, hot and cold flashes, nausea, vomiting, diarrhea, stomach pains and a general "up tight" feeling (R. 23, 24) (Findings - 11). Mr. Gonzales asked for assistance in the county jail but none was provided. (R. 25) Neither was he given any drugs to ease his withdrawal while in the jail. (Findings - 11)

On March 31, 1969, petitioner was arraigned before the District Court and he pled guilty to the grand larceny charge stemming from the alleged theft occurring in April of 1968. On the day of his arraignment, petitioner was suffering from diarrhea and vomiting, a condition that is evidence of severe heroin addiction withdrawal. (R. 13,24,45) (Findings - 11) Petitioner told his attorney, John O'Connell, that he wanted to "cop out" to grand larceny because he was sick and wanted to get out of the county jail and get some attention. He further testified that he was not guilty of the charge. (R. 27) (Findings - 11)

On the date that petitioner pled guilty to the grand larceny charge he was at the height of his heroin withdrawal (R. 48) (Findings-15). Further,



that a guilty plea is itself a conviction and should not, therefore, be accepted unless voluntarily made with full understanding of the consequences thereof.

Michibroda v. United States, 368 U.S. 487, 493 (1961).

Further, this Court has said:

That a plea of guilty must be made voluntarily, without undue influence or coercion, and with a clear understanding of what the charge is, is a self evidence proposition.

Strong v. Turner, 22 Utah 2d 294, 452 P.2d 323, 324 (1969).

Thus, the courts have recognized that for a guilty plea to be valid, it must be both voluntarily given and given with a full understanding of the consequences. However, in petitioner's hearing below it appears from the District Court's Order and Memorandum decision that any finding as to the voluntariness of petitioner's guilty plea was overlooked. The court below said:

I am entirely in agreement that a guilty plea should be set aside where it can be shown by credible evidence that a person was so mentally incompetent that he was capable of acting knowingly and intelligently. I am also of the opinion that to show such mental incompetence requires more than the showing that a person was a drug addict, or that he was experiencing withdrawal, or that he was, in fact, then under the influence of a narcotic drug. It must be shown that because of such state he was,

in fact, mentally incompetent. Neither Dr. Stokes nor Dr. Clark expressed the opinion that such was the case and Gonzales has failed to show by a preponderance of evidence that such was the case. (Memo. Decision - 17).

From the lower court's statement, cited above, it is readily apparent that the court looked only to Gonzales' mental competence in his rendering of his guilty plea, or the court must have determined that if petitioner was competent when he rendered his plea that he must also have done it voluntarily. Petitioner does not contend that he was not competent when he rendered his plea, but that due to his severe suffering from heroin withdrawal (R. 50, 51), he entered his plea involuntarily in order to get treatment.

(R. 37)

That a guilty plea may be given knowingly but not voluntarily was recognized in Munich v. United States, 337 F.2d 356 (9th Cir. 1964). In Munich, the defendant had pled guilty to a violation of the narcotics laws and on a petition for relief he claimed that his plea had been given involuntarily. The court found that the plea had been knowingly made, however, the court also said that "a defendant may understand the nature of the charge without such plea being voluntary." 337 F.2d at 360. The court

then sent the case back for a determination as to the voluntariness of the defendant's guilty plea.

Also, in Heidenman v. United States, 281 F.2d 805 (8th Cir. 1960), petitioners were seeking a writ of habeas corpus claiming that their guilty pleas were involuntary due to threats, by the prosecutor, that he would press for maximum sentences - 60 years - if they did not plead guilty; but if they would plead guilty, he would recommend five year sentences. In sending the case back for a hearing on petitioners' contentions, the court said:

A plea of guilty is not voluntary simply because it is the product of sentient choice. Conduct under duress involves a choice . . . and conduct devoid of physical pressures but not leaving a free choice is a product of duress as much so as choice reflecting physical constraints. Id. at 808. citing Haley v. State of Ohio, 332 U.S. 596.

In the present case, although petitioner's guilty plea may have been knowingly given, it was still involuntary. In a very real sense, he was under duress at the time of his plea because he was at the height of his withdrawal when it was entered. (R. 50) He had had his last "fix" of heroin on March 28, 1969, the morning of his arrest (R. 30) Findings - 10), and on the day he pled guilty to

the larceny charge, March 31, 1969, petitioner was suffering from diarrhea and vomiting, a condition that is evidence of severe heroin withdrawal. (R. 13,24,25) (Findings - 11). In fact, Dr. Clark, the State's expert witness testified that under these circumstances, it was possible that petitioner pled guilty just to get it over with. (R. 51) The Doctor further testified that petitioner may have pleaded guilty even though "his ability to think and understand" would not be impaired, because of the "very uncomfortable state" of being at the height of his withdrawal. (R. 50, 51)

Petitioner also testified, and the lower court so found, that following his arrest on March 28, 1969, he was placed in the Salt Lake County Jail where he began to experience the symptoms of withdrawal, i.e., sweating, hot and cold flashes, nausea, vomiting, diarrhea, stomach pains and a general uptight feeling; that while in jail he requested assistance, but none was provided, neither was he given any drugs to ease his withdrawal. (R. 23,24,25) (Findings - 11) Since petitioner had received no help to ease his withdrawal while in jail, it is obvious that he pled guilty in order to get medical help at the prison.



and, in fact, on the date of his arrival at the prison petitioner was admitted to the hospital for treatment of symptoms indicative of severe heroin withdrawal. (R. 5,6,13) Petitioner remained in the hospital for five days during which time he was extremely uncomfortable and had to be treated with Darvon and tranquilizers to allow him to sleep. (R. 6, 7) (Findings - 14)

Another factor that also indicates petitioner involuntarily pled guilty is that the charge to which he pled guilty, grand larceny stemming from April, 1968, had already been dismissed once, and the attorney that represented petitioner on that charge thought that petitioner's case "was a winner" (R. 52) and that petitioner was "crazy if . . . (he) pled guilty to that charge." (R. 37, 54)

In the final analysis, petitioner has testified that he was not guilty of the charge to which he pled guilty (R. 27) (Findings - 11), and that he did so only to get it over with so he could get some medical help to ease his withdrawal and he couldn't get that help in the jail even though he had requested it. (R. 37) (Findings - 10). Petitioner was in extreme discomfort at the time he pleaded guilty and



even the State's expert witness testified this may have influenced his decision. (R. 50, 51) Thus, even though his plea may have been competent, all indications point to the conclusion that due to the extreme discomfort caused by petitioner's severe withdrawal from heroin, his plea of guilty was not voluntary and hence he was denied due process under the Fourteenth Amendment to the Constitution of the United States.

Petitioner submits that:

a plea of guilty need be deemed involuntary only where it appears that the defendant was laboring under such a strong inducement, fundamental mistake, or serious mental condition that the possibility exists that he may have pleaded guilty to a crime of which he is innocent. State v. Petke, 389 P.2d 164, at 169 (Mont. 1964)

Petitioner contends that the lower court failed to find that his plea was voluntary, and that in fact the facts and circumstances surrounding his plea show that his plea of guilty was involuntarily rendered due to his physical and mental suffering caused by a severe withdrawal from heroin addiction.

## CONCLUSION

On the basis of the facts of this case, it is apparent that petitioner did not voluntarily plead guilty to the grand larceny charge for which he is now incarcerated; this due to the fact that he was under extreme physical stress from severe withdrawal from heroin addiction.

Petitioner prays, therefore, that the judgment of the District Court be reversed with instructions to the court to grant the writ of habeas corpus, or in the alternative for a new trial.

Respectfully submitted,

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