

1971

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

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

ROBERT GONZALES,

Plaintiff-Appellant

vs.

JOHN W. TURNER, Warden,
UTAH STATE PRISON,

Defendant-Appellee

BRIEF OF APPELLANT

AN APPEAL FROM THE
THE THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY

The Honorable Byron D. ...

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TABLE OF CONTENTS

	<i>Page</i>
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION OF THE CASE IN THE LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	
POINT I	
PETITIONER'S GUILTY PLEA WAS NOT INVALID ON THE GROUNDS IT WAS MOTIVATED BY DE- SIRE TO GET RELIEF FROM HEROIN WITHDRAW- AL BECAUSE THE PLEA WAS VOLUNTARY, KNOWING, INTELLIGENT AND ENTERED BY HIM WHILE REPRESENTED BY COMPETENT COUNSEL	5
CONCLUSION	7

TABLE OF CASES

Brady v. United States, 397 U.S. 742, 25 L.Ed.2d 747, 90 S.Ct. 1463 (1970)	6
Buford v. United States, 337 F.2d 439 (7th Cir. 1964)	6
Gibilterra v. United States, 428 F.2d 393 (9th Cir. 1970)	6
Lipscomb v. United States, 209 F.2d 831 (8th Cir. 1954)	6
McCarthy v. United States, 394 U.S. 459, 22 L.Ed.2d 418, 89 S.Ct. 1166 (1969)	6
McMann v. Richardson, 397 U.S. 759, 25 L.Ed.2d 763, 90 S.Ct. 1441 (1970)	6
North Carolina v. Alford, 400 U.S. 25, 27 L.Ed.2d 162, 91 S.Ct. 160 (1970)	6

IN THE SUPREME COURT OF THE STATE OF UTAH

ROBERT GONZALES,

Plaintiff-Appellant,

vs.

JOHN W. TURNER, Warden

UTAH STATE PRISON,

Defendant-Respondent.

Case No.

12262

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a memorandum decision denying appellant's writ of habeas corpus in the District Court of the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Bryant H. Croft, Judge, presiding.

DISPOSITION OF THE CASE IN THE LOWER COURT

The District Court denied petitioner's petition for writ of habeas corpus in a memorandum decision and order dated September 16, 1970, after having heard argument on the matter August 28, 1970.

RELIEF SOUGHT ON APPEAL

Respondent submits that the decision and order of the District Court be affirmed and that the alternative request for a new trial be denied.

STATEMENT OF FACTS

Respondent agrees generally with the facts as stated by appellant, with the following clarifications:

Upon entering a guilty plea in the District Court of the Third Judicial District, in and for Salt Lake County, State of Utah, March 31, 1969, the Honorable Merrill C. Faux, Judge, presiding, the following proceedings took place:

THE COURT: Fourth case, No. 21529; State against Robert Gonzales. "Robert Gonzales" your true and correct name?

MR. GONZALES: Yes.

THE COURT: Let the record show he has received a copy of the information. The Clerk will read the information to you.

(The Clerk reads the information to the defendant.)

THE COURT: Did you hear the charge as the Clerk read it?

MR. GONZALES: Yes, sir.

THE COURT: Are you ready to plead?

MR. GONZALES: Yes.

MR. O'CONNELL: Your Honor, can we take the pleas separately for each count? Different pleas.

THE COURT: Yes; you are charged in two counts; first count charges Burglary in the Third Degree. Are you ready to plead to that?

MR. GONZALES: Yes.

THE COURT: What is your plea?

A. (By Mr. Gonzales): Not guilty.

THE COURT: Not guilty of Burglary. Second count charges Grand Larceny.

MR. GONZALES: Guilty.

THE COURT: Have the problem, then, of imposing sentence.

MR. O'CONNELL: Your Honor, may I have the convenience of the record?

THE COURT: Yes, you may.

MR. O'CONNELL: Are you entering this plea of "guilty" of your own free will?

MR. GONZALES: Yes, I am.

MR. O'CONNELL: Have I — you realize, don't you, that you could enter a plea of "not guilty" and have the matter tried to a jury, if you wish?

MR. GONZALES: Yes.

MR. O'CONNELL: You are willing to give up that right to a trial?

MR. GONZALES: Yes.

MR. O'CONNELL: You are doing this because you, are, in fact, guilty of Grand Larceny on this charge?

MR. GONZALES: Yes.

MR. O'CONNELL: Any promises made, or threats made, to induce you to do this against your free will?

MR. GONZALES: No.

MR. O'CONNELL: Your Honor, I would waive the time for sentencing, ask for sentence, at this time, on the Grand Larceny count. Is that what you wish for?

MR. GONZALES: Yes, that is what I wish.

THE COURT: Then, I sentence you, Robert Gonzales, to the Utah State Prison, and the judgment of the court is that you serve the indeterminate term provided by law for the crime of Grand Larceny.

Commitment will issue forthwith.

MR. LEWIS: If the Court, please, based upon the entry of the plea to the Grand Larceny and the fact that he has been sentenced to the State Prison, it would be the State's motion Count 1 of the information be dismissed, in the interest of justice.

THE COURT: Count 1 is dismissed.

(End of this record.)

Thereafter, Mr. Gonzales contested the validity of that guilty plea in the District Court of the Third Judicial District, in and for Salt Lake Count, State of Utah, August 28, 1970, the Honorable Bryant H. Croft, Judge, presiding.

At that hearing, Mr. Gonzales requested relief on his petition (R. 52), wherein he claimed that his detention was unlawful on the grounds his guilty plea was entered

involuntarily in that he was suffering heroin withdrawal, and therefore could not offer a knowing and intelligent plea. He complained further that he pleaded guilty to a crime he did not commit, in that he entered the plea merely to get relief. (R. 21).

He was represented at the guilty plea hearing, and at the habeas corpus hearing by very able attorneys. (R. 17), (R. 50).

Mr. Gonzales testified that he did consume drugs, and that he went out stealing every day but Sunday to finance his habit. (R. 80).

According to expert testimony the physical discomfort Gonzales experienced was not at all intolerable. (R. 98). Furthermore, the discomfort could not impair understanding, even though it might influence a decision. (R. 100). There is no evidence, whatsoever, that the withdrawal was severe.

In a thorough opinion, Judge Croft denied the petition for a writ of habeas corpus. (R. 27-43).

ARGUMENT

POINT I

PETITIONER'S GUILTY PLEA WAS NOT INVALID ON THE GROUNDS IT WAS MOTIVATED BY DESIRE TO GET RELIEF FROM HEROIN WITHDRAWAL BECAUSE THE PLEA WAS VOLUNTARY, KNOWING, INTELLIGENT, AND ENTERED BY HIM WHILE REPRESENTED BY COMPETENT COUNSEL.

The test of guilty plea validity is whether it is voluntary, knowing, and intelligent at the time it is entered. *McCarthy v. United States*, 394 U.S. 459, 22 L.Ed. 2d 418, 89 S.Ct. 1166 (1969). The motivation for entering the plea is not relevant. A guilty plea is not invalid merely because it was entered to get a lesser penalty, *Brady v. United States*, 397 U.S. 742, 25 L. Ed. 2d 747, 90 S.Ct. 1463 (1970); was motivated by an unconstitutionally obtained confession, *McMann v. Richardson*, 397 U.S. 759, 25 L.Ed. 2d 763, 90 S. Ct. 1441 (1970); or was motivated by fear of death penalty, *North Carolina v. Alford*, 400 U.S. 25, 27 L. Ed 2d 162, 91 S.Ct. 160 (1970).

If fear of death cannot invalidate a guilty plea, certainly anxiety and discomfort associated with a heroin withdrawal cannot invalidate the plea, especially where the withdrawal is not severe.

Hope for relief from drug does not render a guilty plea invalid. *Buford v. United States*, 337 F.2d 439 (7th Cir. 1964); *Gibilterra v. United States*, 428 F.2d 393 (9th Cir. 1970).

In case at bar there is expert testimony that the withdrawal of appellant was not severe, and could not impair his judgment, even though he may have been in pain. (R. 100). Where defendant in criminal case is not suffering pain caused by withdrawal from narcotics which is so severe as to prevent him from comprehending his position, he is mentally competent to enter guilty plea. *Lipcomb v. United States*, 209 F. 2d 831 (8th Cir. 1954).

Thus, the guilty plea is not invalid merely because appellant may have been suffering some pain incident to heroin withdrawal. There is no evidence in the record to show that the plea was not valid. The record is clear that Mr. Gonzales knew the nature of the charge against him and entered the plea on his own free will (R. 17-19), while represented by able counsel. (R. 17).

CONCLUSION

Appellant's guilty plea may have been motivated by his desire to receive some relief, but that does not invalidate his plea.

The record shows that the plea was voluntary, knowing, and intelligent.

Therefore, respondent asks this Court to affirm the decision and order of the District Court in denying writ of habeas corpus.

Respectfully submitted,

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