

2000

Charles Watkins v. Hank Galetka, Warden : Brief in Opposition to Certiorari

Utah Supreme Court

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IN THE UTAH SUPREME COURT

UTAH SUPREME COURT

CHARLES WATKINS, :

Petitioner/Appellant, :

v. :

Case No. 20000210-SC
Ct. Apps. No: 990509-CA

HANK GALETKA, Warden, :

Respondent/Appellee. :

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
TO THE UTAH COURT OF APPEALS

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FILED

MAR 23 2000

CLERK SUPREME COURT

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IN THE UTAH SUPREME COURT

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 HANK GALETKA, Warden, :
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 Respondent, Appellee. :

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
TO THE UTAH COURT OF APPEALS

QUESTION PRESENTED FOR REVIEW

Should this court grant a writ of certiorari to review the Court of Appeals' order which denied appellant's motion requesting that transcripts be provided at the State's expense?

COURT OF APPEALS' ORDER

The Court of Appeals' unpublished order was issued on January 26, 2000, and is attached as **Addendum A**.

STATEMENT OF THE CASE

Criminal Proceedings. On September 11, 1992, Watkins was charged by information with one count of Sexual Abuse of a Child, a second degree felony. At the time Watkins

was charged, he was in prison on a parole violation. The State later amended the Information, adding one count of Lewdness Involving a Child, a class A misdemeanor.

On February 22, 1994, a jury trial was held wherein Watkins was represented by Stephen R. McCaughey. However, sometime after opening statements, the court ordered a mistrial and reset the matter for trial the following day.

On February 23, 1994, Watkins was tried before a jury on the charges alleged in the Amended Information. After deliberating for almost six hours, the jury could not reach a verdict, resulting in a hung jury.

On June 27, 1994, Watkins was again tried before a jury wherein he was represented by Paul Quinlan. In case #931900810,¹ the jury returned a guilty verdict on Count I, Sexual Abuse of a Child, but acquitted Watkins on Count II, Lewdness Involving a Child. On August 26, 1994, Watkins was sentenced to a prison term of one-to-fifteen years to be served consecutively with the prison term he was serving at the time of trial. Watkins did not appeal his conviction or sentence.

First Petition for Post-Conviction Relief. On January 29, 1996, Watkins filed a Petition for Extraordinary Relief with the Third District Court, case #960900679 HC, challenging his conviction in case #931900810. Watkins alleged that his right to a speedy trial was violated and that his attorneys contributed to the delay. On the respondent's motion, the court dismissed the petition with prejudice on the grounds that (1) the claims

¹ Watkins has other convictions, post-conviction petitions and appeals. Specific case numbers have been included in an effort to avoid confusion.

were procedurally barred because Watkins could have, but did not, raise his claims on direct appeal, and (2) Watkins failed to respond to the respondent's motion to dismiss. Watkins does not appear to have appealed that dismissal.

Second Petition for Post-Conviction Relief. On December 31, 1998, Watkins filed another Petition for Relief Under the Post-Conviction Remedies Act, case #980913311. This petition also challenged his conviction in the underlying criminal case #931900810. In response, the State filed a Motion to Dismiss. Watkins filed his response to the Motion to Dismiss on or about March 10, 1999. In a hearing held on March 24, 1999, the court granted the State's Motion to Dismiss. The court also directed the State to prepare an order. However, the court's ruling listed additional grounds for dismissal which were not in respondent's Motion to Dismiss. Therefore, on April 9, 1999, the respondent filed a Motion for Clarification.

The respondent subsequently filed a proposed order with the court on or about May 4, 1999. However, it does not appear that the court immediately signed this proposed order.

Appeals. Watkins filed a notice of appeal, case #990367-CA, apparently based on the oral ruling of the court made in the hearing on March 24, 1999, in case #980913311, the second post-conviction petition. A review of the court docket shows that the record was sent to the Court of Appeals on June 2, 1999. The file sent to the Court of Appeals did not contain any written and signed order granting dismissal of the petition for post-conviction relief in case #980913311.

Because no final order of dismissal appeared in case #980913311, on June 24, 1999, the Court of Appeals dismissed the appeal in case #990367-CA for lack of jurisdiction. The Remittitur was issued on August 9, 1999.

In the meantime, on May 27, 1999, Judge Homer Wilkinson of the Third District Court, signed a written order dismissing the petition in case #980913311. This order appears to have been filed in Third District Court on June 2, 1999. However, a copy was apparently not sent to the Court of Appeals.

Current Appeal. Watkins subsequently filed a new notice of appeal, which also challenged the dismissal in case #980913311. This appeal was given Court of Appeals case #990509-CA. Watkins also filed a Motion with the Court of Appeals for preparation of transcripts at the State's expense. On January 26, 2000, the Court of Appeals entered an Order which denied Watkins's motion for preparation of transcripts at the state's expense - attached as **Addendum A**.

On January 21, 2000, the Court of Appeals sent notice that it was considering summary disposition in case #990509-CA. The State submitted a memorandum supporting the Court's Sua Sponte Motion for Summary Disposition. As of March 21, 2000, the Court of Appeals had not yet ruled on its sua sponte motion in case #990509-CA.

Watkins filed a motion for enlargement of time to file a petition for writ of certiorari from the order denying preparation of transcripts at the state's expense. This motion was granted on March 6, 2000. This Court ordered that the petition for writ of certiorari must be

filed on or before March 23, 2000. On or about March 3, 2000, Watkins filed a Petition for Writ of Certiorari. The Petition for Writ of Certiorari is based upon the Court of Appeals' order which denied Watkins's motion to have transcripts provided at the state's expense.

ARGUMENT

THIS COURT SHOULD NOT GRANT THE PETITION FOR WRIT OF CERTIORARI BECAUSE IT DOES NOT PRESENT ANY QUESTION OF IMPORTANCE.

A writ of certiorari "will be granted only for special and important reasons." Utah R. App. P. 46(a). Such reasons include: 1) when a Court of Appeals panel renders a decision in conflict with that of another Court of Appeals panel on the same legal issue; 2) when the Court of Appeals decides a question of state or federal law in a way that is in conflict with a decision of this Court; 3) when the Court of Appeals' decision has so far departed from the accepted and usual course of judicial proceedings or has sanctioned such a departure by a lower court so as to call for an exercise of this Court's power of supervision; and 4) when the Court of Appeals decides an important question of state or federal law which has not been, but should be settled by this Court. *Id.*

The petition in this case does not present any question of importance within the categories listed, nor does it raise any other "special" or "important" reason for granting certiorari review. More important, however, is that the Court of Appeals' order is reasonable and appropriate.


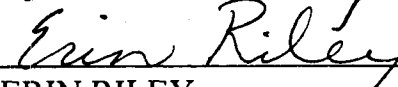
As pointed out by the Court of Appeals, the “appeal is from the trial court’s order denying appellant’s petition for extraordinary relief. As such, the matter is a civil appeal, rather than a direct criminal appeal, and appellant has no statutory right to transcripts at the State’s expense. See Utah Code Ann. § 77-32-305(1999).” (Order attached as **Addendum A**).

CONCLUSION

Watkins has not presented a “special or important” reason for this Court to review the Court of Appeals’ order denying Watkins’s request that he be provided with transcripts at the State’s expense. This Court should therefore deny the petition for a writ of certiorari.

RESPECTFULLY SUBMITTED this ^{23rd}~~23rd~~ day of March, 2000.

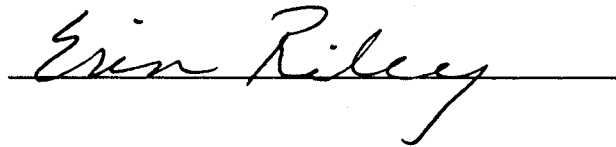
JAN GRAHAM
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Assistant Attorney General
Attorney for Respondent/Appellee

MAILING CERTIFICATE

I hereby certify that on this 23rd day of March, 2000, I mailed, postage prepaid, two accurate copies of the foregoing Brief Opposing Certiorari to the following:

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Utah State Prison
Post Office Box 250
Draper, UT 84020

A handwritten signature in cursive script, reading "Erin Riley", is written over a horizontal line.

Addendum A

JAN 27 2000
APPEALS

JAN 27 2000

FILED
JAN 26 2000
COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

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Charles Watkins,)
)
 Plaintiff and Appellant,)
)
 v.)
)
 Hank Galetka, Warden,)
)
 Defendant and Appellee.)

ORDER
Case No. 990509-CA

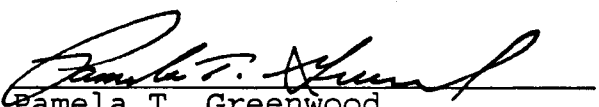
This matter is before the court upon appellant's motion for preparation of transcripts at the State's expense and request that the court consider his motion en banc.

This appeal is from the trial court's order denying appellant's petition for extraordinary relief. As such, the matter is a civil appeal, rather than a direct criminal appeal, and appellant has no statutory right to transcripts at the State's expense. See Utah Code Ann. § 77-32-305(1999).

IT IS HEREBY ORDERED that appellant's motions are denied.

Dated this 26 day of January, 2000.

FOR THE COURT:


Pamela T. Greenwood,
Presiding Judge