1977

# Joseph Santina v. Delmar Larsen : Brief of Respondent

Utah Supreme Court


D. Gilbert Athay; Attorney for AppellantCharles Marson; Attorney for Respondent

IN THE SUPREME COURT OF THE

STATE OF UTAH

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JOSEPH SANTINA,

Plaintiff-Appellant,

-vs-

DELMAR LARSEN,

Defendant-Respondent.

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APPEAL
JURISDI
STATE
THE

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BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Joseph Santina, petitioned the Third Judicial District Court, in and for Salt Lake County, State of Utah, for a writ of habeas corpus based upon his allegation that the extradition documents demanding his return to Illinois were insufficient to sustain the requested extradition (R.2,3).

DISPOSITION IN THE LOWER COURT

Appellant's petition for a writ of habeas corpus was denied by the Third Judicial District Court on September 30, 1976, the Honorable Stewart M. Hanson, Sr. Judge, presiding (R.7).

## RELIEF SOUGHT ON APPEAL

Respondent prays that this Court affirm the decision of the lower court and expedite Illinois' extradition request.

## STATEMENT OF FACTS

Appellant Santina was charged by indictment on December 23, 1973, with the crimes of failure to appear and criminal conspiracy in the State of Illinois. On April 1, 1976, the appellant was arrested, booked, and incarcerated in the Salt Lake County Jail and, on April 7, 1976, he was charged with the crime of being a fugitive from justice in the State of Utah. On May 19, 1977, the Utah Governor's Office received extradition papers for appellant from the State of Illinois.

On June 30, 1976, counsel for appellant petitioned the Third Judicial District Court, in and for Salt Lake County, State of Utah, for a writ of habeas corpus alleging, inter alia, that the documents demanding petitioner's extradition to Illinois were substantively lacking and not in proper form as prescribed by Utah Code Ann. § 77-56-3 (1953) (R.2,3).

On September 30, 1976, petitioner's writ was argued by counsel for petitioner and counsel for respondent before Honorable Stewart M. Hanson, Sr. (R.7). Said petition was denied by Judge Hanson, Sr., and petitioner was ordered extradited as soon as possible (R.7).

On October 14, 1976, petitioner filed a notice of appeal with this Court (R.8). On March 31, 1977, the Supreme Court Clerk send appellant's attorney a notice of default. Subsequently, on April 28, 1977, this Court granted appellant an extension of time until May 31, 1977, to file his brief on appeal. Failing to proceed with this appeal, the Supreme Court Clerk sent a second notice of default to counsel for appellant on June 24, 1977. On August 4, 1977, counsel for respondent submitted a motion to dismiss for failure to prosecute based upon the above mentioned facts. On August 12, 1977, this Court granted appellant's counsel until August 18, 1977, to file a brief with this Court, under penalty of dismissal.

Appellant's brief was submitted on August 19, 1977, challenging the disposition of the petition for a writ of habeas corpus in the lower court. Presently, Illinois is still awaiting the the extradition of the fugitive which they originally sought on May 19, 1976.

## ARGUMENT

### POINT I

THE GOVERNOR OF UTAH SHALL RECOGNIZE A DEMAND FOR EXTRADITION FROM A DEMANDING STATE WHERE THE EXTRADITION DOCUMENTS SUBSTANTIALLY COMPORT WITH THE STATUTORY REQUIREMENTS OF UTAH CODE ANN. § 77-56-3 (1953).

Appellant argues that the lower court erred in not finding that the extradition documents from the demanding state did not comply with the statutory requirements set forth in Utah Code Ann. § 77-56-3 (1953), that there is no evidence to support an arrest warrant by the Governor of Utah, and therefore, that the appellant was unlawfully deprived of his liberty by the State of Utah.

Respondent asserts that the documents of the demanding state complied with Utah Code Ann. § 77-56-3 (1953), in every essential part.

Before the Governor of the State of Utah can issue an arrest warrant for a fugitive requested by a demanding state, Utah Code Ann. § 77-56-3 (1953), requires that the demanding state present documents of a specific form and substance. Utah Code Ann. § 77-56-3 (1953), states:

> "No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 77-56-6, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon or by a copy of a judgment of conviction or of a sentence composed in execution, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand."

Once the Governor determines that the request of the demanding state sufficiently meets the requirements of Utah Code Ann. § 77-56-3 (1953), he may then sign a warrant for the arrest of the fugitive. Utah Code Ann. § 77-56-7 (1953).

In the instant case, the documents from the demanding state were clearly sufficient to justify execution of an arrest warrant by the Governor of Utah.

The documents presented by the State of Illinois state that appellant Santina was in Illinois at the time of the commission of the crimes of calculated criminal drug conspiracy, unlawful delivery of a controlled substance, unlawful delivery of cannabis, and unlawful possession of cannabis. It is further stated by the Governor of Illinois that appellant Santina thereafter fled from Illinois and took refuge in the State of Utah.

The extradition papers contain a Bill of Indictment, filed in the Circuit Court of the Twelfth Judicial Circuit, Will County, State of Illinois, by a Grand Jury charging appellant with the commission of the above mentioned crimes. The extradition documents further contain a Criminal Capias (bench warrant) commanding the sheriff of Will County, State of Illinois, to take appellant into custody. The attached affidavit of Keith Kostelny, Deputy Sheriff, Will County, states that appellant Santina made bail in the amount of $30,000, but on September 30, 1974, failed to appear for trial, thus violating the terms of his bail agreement.

Finally, the request by the Governor of Illinois states that appellant Santina stands charged with the above mentioned crimes under the laws of Illinois. The Governor's requisition concludes by authenticating all the papers and documents annexed to his extradition request.

Each essential document and needed recital was set forth in the request from the demanding state, fulfilling the terms of Utah Code Ann. § 77-56-3 (1953), and allowing the Governor to sign an arrest warrant for the extradition of appellant.

Respondent notes that appellant's brief fails to allege those particulars he feels are lacking in the extradition documents of the demanding state. Utah Code Ann. § 77-56-3 (1953), sets forth the precise documentary requirements for extradition; providing various alternatives for escapees, and bail bond, probation, and parole violators. Each specific circumstance requires a different form of documentation. In the instant case, the extradition papers of the demanding state contain documentation sufficient for the return of a bail bond violator--appellant's current status. Appellant cites Little v. Beckstead, 11 Utah 2d 270, 358 P.2d 93 (1961), as requiring additional documentation not contained in the papers of the demanding state. Respondent notes that Little dealt with the return of a fugitive to Oregon after the completion of a term in the Utah State Prison. Little had been previously convicted of burglary and forgery in Oregon and had fled the state pending the outcome of an appeal. Thus, the two cases are factually

dissimilar and require different extradition documentation.

Finally, respondent notes that the extradition papers of the demanding state sufficiently comply with Illinois Annotated Statutes 60 § 40, which statute is identic to Utah Code Ann. § 77-56-23 (1953), which requires:

> "When the return to this state of a person charged with crime in this state is required the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.
>
> (b) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which escape was made shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement, or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

> (c) The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate stating the offense with which the accused is charged, or of the judgment or conviction, or of the sentence. The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application with the action of the governor indicated by endorsement thereon and one of the certified copies of the indictment, complaint, information and affidavits or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition."

Thus, had the extradition papers of the demanding state been prepared by Utah authorities for the extradition of a similar fugitive, they would have sufficiently complied with Utah law.

It is clear that the above mentioned extradition request substantially comports with all the requirements of Utah Code Ann. § 77-56-3 (1953).

POINT II

FAILURE OF THE TRIAL COURT TO FILE FINDINGS OF FACT AND CONCLUSIONS OF LAW DOES NOT CONSTITUTE REVERSIBLE ERROR.

Appellant alleges that counsel for the State failed to file findings of fact or conclusions of law after his petition for a writ of habeas corpus was denied and contends that he was substantially prejudiced thereby.

First, respondent notes that appellant has mistakenly placed the blame for the failure to file findings of fact and conclusions of law upon counsel for the State. It is not respondent's duty to make and file such findings and conclusions, but the duty of the trial court Harmon v. Rasmussen, 13 Utah 2d 422, 375 P.2d 762 (1962), LeGrand Johnson Corp. v. Peterson, 18 Utah2d 260, 420 P.2d 615 (1966). Rule 52(a), Utah Rules of Civil Procedure (1953), provides:

> "In all actions tried upon the facts without a jury or with an advisory jury, the court shall, unless the same was waived, find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. The

> findings of a master to the extent that the court adopts them, shall be considered as the findings of the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in Rule 41(b)." (Emphasis added)

Next, respondent asserts that the trial court's failure to make and file such findings and conclusions is, at best, harmless error and does not constitute reversible error.

Rule 61, Rules of Civil Procedure (1953), provides:

> "No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties, is ground for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." (Emphasis added)

This "substantial rights" test has been consistently followed in our decisional law. In Ortega v. Thomas, 14 Utah 2d 296, 383 P.2d 406 (1963), this Court considered alleged errors in jury instructions and improper comments

by the trial court concerning the evidence presented at trial. Finding no reversible error and citing Rule 61, this court stated:

> "In order to justify reversal, the appellant must show error that was substantial and prejudicial in the sense there is at least a reasonable likelihood that in the absense of the error the result would have been different." 383 P.2d at 408.

Thus, for appellant to prevail on appeal, he must show that the trial court's failure to file findings of fact and conclusions of law was such prejudicial error that "there is at least a reasonable likelihood" that, excluding such an error, the result would have been different. Clearly appellant cannot show such. Even if the trial court had filed findings and conclusions, its decision denying appellant's petition could have in no way been altered or changed. Therefore, failure to file findings of fact and conclusions of law does not constitute substantial and prejudicial error mandating reversal. This court's previous pronouncements regarding the above-discussed error affirm this principle.

In Snyder v. Allen, 51 U. 291, 169 P. 945 (1917), the trial court failed to make findings upon material issues presented by defendant's answer and counterclaim. This court held that:

> "...while the failure of the trial court to find upon all the material issues presented by the pleadings was clearly error, the error, as we view the record before us, did not affect any substantial right of the defendants, and this court will not reverse the judgment where the error thus excepted to and complained of resulted in no prejudice to the defendants." 169 P. at 945.

In Petty v. St. George Garage Co., 60 U. 126, 206 P. 720 (1922); In re Love's Estate, 75 U. 342, 285 P. 299 (1930); and Ellison v. Johnson, 18 Utah 2d 374, 423 P.2d 657 (1967), this Court was again faced with the problem of omitted findings and conclusions. In each instance, this Court affirmed its ruling in Snyder v. Allen, supra.

Therefore, the trial court's failure to file findings of fact and conclusions of law was not prejudicial to appellant and cannot constitute error of such a nature that reversal is required.

When reviewing a case where findings of fact and conclusions of law have been omitted, this Court will assume facts in accordance with the decision of the lower court. In Mower v. McCarthy, 122 U. 1, 245 P.2d 224 (1952), this Court ruled:

> "In reviewing a case of this kind where issues of fact are involved and there are no findings of fact, we do not review the facts but assume that the trier of the facts found them in accord with its decision, and we affirm the decision if from the evidence it would be reasonable to find facts to support it. See Utah Rules of Civil Procedure, Rule 49(a). This is the same procedure which is followed where a jury returns a general verdict without disclosing its findings on the facts, and in administrative agency cases where findings of fact are not required, but we cannot review the facts."245 P.2d at 226.

In the instant case, the lower court denied appellant's petition for a writ of habeas corpus. (R.7). Respondent admitted petitioner's allegation numbers one (1) and three (3) and denied allegation number two (2) (R.4). Petitioner's allegation number two (2) contended that the extradition papers of the demanding state did not comply with the requirements of Utah Code Ann. § 77-56-3 (1953) (R.2). Obviously, when the trial court denied petitioner's writ, it decided only issue number two (2) and must have necessarily decided that the extradition documents of the demanding state complied with Utah Code Ann. § 77-56-3 (1953).

Respondent asserts, therefore, that in accordance with the rule announced in Mower v. McCarthy, supra, this Court should assume that the trial judge found the

extradition documents to be sufficient, in accordance with his decision, and affirm the decision of the lower court.

## CONCLUSION

Respondent contends that an examination of the extradition papers of the demanding state reveals that said documents comply in every respect with the statutory requirements of Utah Code Ann. § 77-56-3 (1953), and justify the issuance of a Governor's Warrant by the Governor of Utah for the return of the fugitive to the demanding state.

Respondent also contends that the failure of the trial court to make and file findings of fact and conclusions of law is, at best, harmless error and cannot be considered reversible error.

Finally, due to the numerous delays with respect to this extradition, including the notices of default and the extensions connected with this appeal, respondent urges this Court to expedite ruling on the appeal and permit the fugitive appellant to be returned

to the demanding state forthwith.

Respectfully submitted,

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