

1987

Ralph Peckham v. Gerald Cook, Warden, Utah State Prison : Brief of Appellant

Utah Court of Appeals

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DOCKET NO. 870403-CA UTAH COURT OF APPEALS

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RALPH PECKHAM,	;	BRIEF OF THE APPELLANT
Plaintiff/	;	Case No. 870403-CA
Appellant,	;	
vs.	;	PRIORITY THREE - HABEAS CORPUS
GERALD COOK,	;	
WARDEN, UTAH STATE PRISON,	;	
Defendant/	;	
Respondent.	;	

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APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

HONORABLE FRANK NOEL - JUDGE

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COURT OF APPEALS

UTAH COURT OF APPEALS

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RALPH PECKHAM, ;
 ; BRIEF OF THE APPELLANT
Plaintiff/ ;
Appellant, ; Case No. 970403-CA
 ;
vs. ;
 ; PRIORITY THREE - HABEAS CORPUS
GERALD COOK, ;
WARDEN, UTAH STATE PRISON, ;
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Defendant/ ;
Respondent. ;

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STATEMENT OF THE CASE

This is an appeal from a final order, executed by the Honorable Frank Noel on August 11, 1987.

Appellant and Respondent each filed a Motion for Summary Judgment, pursuant to Rule 56 of the Utah Rules of Civil Procedure, on certain conceded facts.

Appellant's Petition for a Writ of Habeas Corpus was denied, and the State's Motion for Summary Judgment was granted, which ended the Appellant's Petition for a Writ of Habeas Corpus, on the merits and with prejudice.

Appellant claims that he was no longer on probation as a matter of law, which he was held to have violated his probation.

Appellant is now serving the indeterminate sentence at the Utah State Prison of zero to five years, which the Board of Pardons, has determined will be the full five years.

STATEMENT OF THE FACTS

Appellant, Ralph Frank Peckham was charged on July 1, 1983, with FORCIBLE SODOMY, a Felony of the First Degree. Through a plea bargain arrangement the Appellant, on or about July 21, 1983, pled guilty to the crime of FORCIBLE SEXUAL ABUSE, a Felony of the Third Degree.

Immediately thereafter, the Appellant was committed to the Utah State Hospital for a thirty (30) day evaluation and report.

On September 15, 1983, the Defendant was sentenced to the Utah State Prison for the indeterminate sentence of 0 to 5 years, but the prison term was stayed, and the Appellant was placed on probation, as of that date.

On October 7, 1985, the Defendant was charged with a probation violation involving a simple assault (a Class B Misdemeanor) with his then girl friend.

The Appellant admitted the allegation concerning the said assault, and then was ordered to undergo a 90 day evaluation.

On January 9, 1986, the Honorable Rodney S. Page, District Judge, in the Second Judicial District Court, in

and for the County of Davis, State of Utah, committed the Defendant to the Utah State Prison for the indeterminate term of zero to five years.

Appellant filed his Petition for a Writ of Habeas Corpus on or about June 3, 1987, which was submitted to the Court pursuant to Rule 56 of the Utah Rules of Civil Procedure on or about July 31, 1987.

The District Court in Salt Lake County, State of Utah, entered an order on or about August 11, 1987, dismissing the Appellant's Petition for a Writ of Habeas Corpus, from which the Appellant now appeals.

SUMMARY OF THE ARGUMENTS

1. ARGUMENT ONE - Appellant submits that he no longer was on probation at the time that the Court found that he had violated his probation. His probation was for eighteen months and he had gone the full eighteen months without any finding of a probation violation.

2. ARGUMENT TWO - Appellant submits that even if the court does not take the time from being placed on probation but rather takes the time when the applicable statute was enacted, Appellant still had gone a full eighteen months without any findings that he had violated his probation.

3. ARGUMENT THREE - Appellant submits that the applicable statute, terminating his probation, was self executing, and required no further act by himself or by the court.

4. ARGUMENT FOUR - Appellant submits that the interpretation of the suggested Statute of Limitations is unconstitutional.

ARGUMENT ONE

Appellant, legally, was not on probation when he was held to having violated his probation.

The provision in 77-18-1(7)(a) of the Utah Code Annotated as amended in 1987, reads as follows:

(7)(a) Upon completion without violation of 18 (eighteen) months probation in felony or Class A misdemeanor cases, or six months in Class B misdemeanor cases, the probation period shall be terminated unless earlier terminated by the Court.

In the case at bar, the Court set no specific term of probation when he was placed on probation by the Honorable J. Duffy Palmer, District Court Judge, on or about September 15, 1983.

Hence, on March 15, 1985, the Defendant was as a matter of law, no longer on probation, and so when the Court held that he had violated his probation on October 7, 1985, the holding was of no force of effect, from a legal standpoint.

From a practical standpoint, however, the Appellant ended up at the Utah State Prison, serving an indeterminate term of zero to five years, which the Board has now determined will be the full five years.

The State concedes that he had served a full eighteen (18) months of probation, without violation, in their statement of the facts to the lower Court #3:

#3. The Plaintiff did not violate the terms of his probation for at least 18 months -- that is through March, 1985. Plaintiff's Petition #4.

The matter was submitted to the District Court in Salt Lake County, State of Utah, pursuant to Rule 56 of the Utah Rules of Civil Procedure, based upon the notion that there was no dispute upon the facts.

Based upon the notion that there was no dispute as to any material fact, Appellant was entitled to judgment as a matter of law.

ARGUMENT TWO

Assuming, arguendo, that the said law was not in place at the time that he was placed on probation, he still would have completed a full eighteen (18) months before the District Court made any finding that he had violated his probation.

The reference to the Utah Code Annotated, first went into effect on March 29, 1984, and was originally referred to as 77-18-1(10)(a) and reads as follows:

(10)(a) Upon completion without violation of 18 months probation in felony or Class A misdemeanor cases, or six months in Class B misdemeanor cases, the offender shall be terminated from sentence and the supervision of the Division of Corrections, unless the person is earlier terminated by the Court.

Assuming then that the provision of the Code was not applicable to the Appellant until March 29, 1984, he still had a full eighteen (18) months before the Court made any findings that there was any violation of his probation.

Some (18) eighteen months from March 29, 1984, would be September 29, 1985, and the Appellant was not found to have violated any terms of his probation until October 7, 1985.

Hence, even if the statute does not apply to the Appellant retroactively, and the said (18) eighteen months begins from March 29, 1984, the Defendant was still legally

not on probation when the Court held that he had violated his probation, on October 7, 1985.

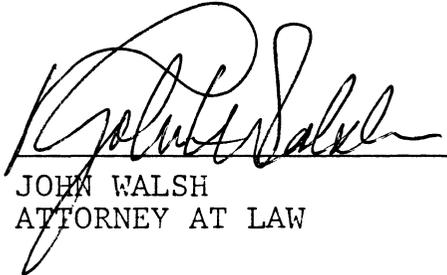
As a result, pursuant to Rule 56 of the Utah Rules of Civil Procedure, since there was not dispute as to any material issue of fact, the Appellant was entitled to judgment as a matter of law.

It should be noted that the provision in the Code, covers all felonies whether Capital, First Degree, Second Degree and Third Degree, and here where the Defendant was before the Court on the least serious of all felonies, he should have been terminated, just as requested by Adult Probation and Parol on May 30, 1985, as reflected in the Minute Entry bearing the same date:

This is the time for Review. Judy Valieka is present on behalf of John Carter and is representing A.P. & P. She reports that the Defendant has been on probation 20 months and is living in Salt Lake City. He is receiving counseling and Mr. Carter requests termination.

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be delivered four (4) true and correct copies of the foregoing BRIEF OF THE APPELLANT, to the Respondent by delivering the same to DAVID L. WILKINSON, ATTORNEY GENERAL, STUART W. HINCKLEY, ASSISTANT ATTORNEY GENERAL, CHIEF, HUMAN RESOURCES DIVISION, BRENT A. BURNETT, ASSIST ATTORNEY GENERAL, ATTORNEYS FOR THE DEFENDANT, 236 STATE CAPITOL, SALT LAKE CITY, UTAH, 84114, this 12th day of February, 1988.



JOHN WALSH
ATTORNEY AT LAW

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UTAH COURT OF APPEALS

COURT OF APPEALS

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RALPH PECKHAM,	;	ADDENDUM
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vs.	;	
GERALD COOK,	;	PRIORITY THREE - HABEAS CORPUS
WARDEN, UTAH STATE PRISON,	;	
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ARTICLE I, SECTION 5 - HABEAS CORPUS

The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it.

ARTICLE I, SECTION 7 - DUE PROCESS OF LAW

No person shall be deprived of life, liberty or property, without due process of law.

ARTICLE I, SECTION 11 - COURTS OPEN - REDRESS OF INJURIES

All courts shall be open, and every person, for an injury done to him in his person or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel any civil cause to which he is a party.

AMENDMENT 14 - SECTION 1 - CITIZENSHIP - DUE PROCESS OF LAW
EQUAL PROTECTION

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

77-18-1(10)(a) UTAH CODE ANNOTATED, as amended in 1984:

(10)(a) Upon completion without violation of 18 months probation in felony or class A misdemeanor cases, or six months in Class B misdemeanor cases, the offender shall be terminated from sentence and the supervision of the Division of Corrections, unless the person is earlier terminated by the court.

77-18-1(10)(a) UTAH CODE ANNOTATED, as amended in 1985

(10)(a) Upon completion without violation of 18 months probation in felony or class A misdemeanor cases, or six months in class B misdemeanor cases, the offender shall be terminated from sentence, unless the person is earlier terminated by the Court.

77-18-1(7)(a) UTAH CODE ANNOTATED, as amended in 1987

(7)(a) Upon completion without violation of 18 months' probation in felony or Class A misdemeanor cases, or six months in Class B misdemeanor cases, the probation period shall be terminated unless earlier terminated by the Court.

77-18-1(7)(c) UTAH CODE ANNOTATED, as amended in 1987

(7)(c) At any time prior to the termination of probation, upon a minimum of five days' notice and hearing or upon a waiver of the notice and hearing by the probationer, the court may extend probation for an additional term of 18 months in felony or Class A misdemeanors or six months in Class B misdemeanors if fines or restitution or both are owing.

Rule 56(c) UTAH RULES OF CIVIL PROCEDURE

The motion shall be served at least ten days before the time fixed for hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

78-12-31.1 UTAH CODE ANNOTATED, as amended in 1979

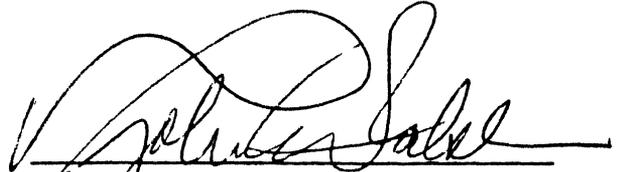
HABEAS CORPUS - THREE MONTHS

Within three months:

For relief pursuant to a writ of habeas corpus. This limitation shall apply not only as to grounds known to petitioner but also to grounds which in the exercise of reasonable diligence should have been known by petitioner or counsel for petitioner.

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a copy of the foregoing, ADDENDUM, to the Defendant, by mailing the same to DAVID L. WILKINSON, ATTORNEY GENERAL, STUART W. HINCKLEY, ASSISTANT ATTORNEY GENERAL, CHIEF, HUMAN RESOURCES DIVISION, BRENT A. BURNETT, ASSISTANT ATTORNEY GENERAL, ATTORNEYS FOR RESPONDENT, 236 STATE CAPITOL, SALT LAKE CITY, UTAH 84114, dated this 20th day of February, 1988.



JOHN WALSH
ATTORNEY AT LAW