

1977

Kent L. Maxwell v. Honorable Robert G. Gibson : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

KENT L. MAXWELL,

:

Plaintiff-

Appellant,

:

v.

:

HONORABLE ROBERT G. GIBSON,
Judge of the Salt Lake City
Court of Salt Lake County,
State of Utah,

:

Case No. 15284

:

Defendant-

Respondent.

:

APPELLANT'S BRIEF

Appeal From the Judgment of the Third District Court
in and for Salt Lake County, State of Utah
Honorable Peter F. Leary, Judge

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Library Services and Technology Act, administered by the Utah State Library.

Machine-generated OCR, may contain errors

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

| | | |
|-----------------------------|---|----------------|
| KENT L. MAXWELL, | : | |
| | : | |
| Plaintiff-Appellant, | : | |
| | : | |
| v. | : | Case No. 15284 |
| HONORABLE ROBERT G. GIBSON, | : | |
| Judge of the Salt Lake City | : | |
| Court of Salt Lake County, | : | |
| State of Utah, | : | |
| | : | |
| Defendant-Respondant. | : | |
| | : | |

APPELLANT'S BRIEF

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STATEMENT OF THE NATURE OF THE CASE

Appellant appeals from the judgment of the Third District Court in and for Salt Lake County, State of Utah, which upheld the sentence imposed by the Salt Lake City Court.

DISPOSITION IN THE LOWER COURT

On August 4, 1975, appellant was sentenced by the Honorable Robert C. Gibson for violating Sec. 41-6-44, Utah Code Anno. after appellant had pled guilty to the charge of driving while intoxicated. Appellant was fined \$200 and given a suspended sentence.

On March 15, 1977, appellant filed a petition with the District Court of Salt Lake County seeking a determination that the Salt Lake City Court lacked jurisdiction to have heard appellant's case. On May 24, 1977, the parties having stipulated to the facts, the District Court, the Honorable Peter F. Leary presiding, determined that since appellant pled guilty to the charge, appellant consented to the Court's in personam jurisdiction and upheld the City Court's sentence.

RELIEF SOUGHT ON APPEAL

Appellant seeks a determination that the Salt Lake City Court lacked jurisdiction to try appellant and accept appellant's guilty plea, and further, to have appellant's record expunged and the amount paid as fine returned to him.

STATEMENT OF FACTS

The parties stipulated to the facts as they appear on the police record of arrest (R. p. 6), and which is an exhibit before the Court. Appellant does not alter that position here.

DOES A PLEA OF GUILTY WAIVE ALL DEFENSES SUCH THAT THE DEFENSE OF LACK OF JURISDICTION IS DENIED TO APPELLANT AT TIME OF SENTENCING OR ON COLLATERAL ATTACK OF SUCH PLEA?

The United States Supreme Court has had occasion to discuss this issue several times: Brady v. United States, 397 U.S. 742; McMann v. Richardson, 397 U.S. 759; Parker v. North Carolina, 397 U.S. 790; Tollett v. Henderson, 411 U.S. 258; Blackledge v. Perry, 417 U.S. 21; Menna v. New York, 423 U.S. 61 (1975).

In each case the Supreme Court reiterated the judicially created rule that a guilty plea waives all defenses except those which are jurisdictional in nature. Unless a jurisdictional defense is available to defendant, he may only rely on "a federal habeas corpus proceeding to attacks on the voluntary and intelligent nature of the guilty plea," Blackledge, supra, 417 U.S. at p. 30.

In the Blackledge, supra, case, the Court found it necessary to explain what might fall within the meaning of the word "jurisdictional."

"... Although the underlying claims presented in Tollett and the Brady trilogy were of constitutional dimensions, none went to the very power of the State to bring the defendant into court to answer the charge brought against him. The defendants in McMann v. Richardson, for example, could surely have been brought to trial

without the use of the allegedly coerced confessions and even a tainted indictment of the sort alleged in Tollett could have been "cured" through a new indictment by a properly selected grand jury. In the case at hand, by contrast, the nature of the underlying constitutional infirmity is markedly different.... Unlike the defendant in Tollett, Perry is not complaining of "antecedent constitutional violations" or of a "deprivation of constitutional rights that occurred prior to the entry of the guilty plea.".... Rather, the right that he asserts and that we today accept is the right not to be haled into court at all upon the felony charge. The very initiation of the proceedings against him in the Superior Court thus operated to deny him due process of law."

As the above quotes clearly indicate, it is a violation of due process to "hale a defendant into court" under color of State authority when it is against the law to do so. Such a violation of due process rights is, in fact, a jurisdictional defense for purposes of relief from a guilty plea.

Turning now to the facts in this case as stated in the police exhibits before the Court, it is clear that the University of Campus Police effecting the arrest did so under color of State Authority when, in fact, the Campus Police had no such authority. Appellant is mindful of this Court's holding in Utah v. Comish, Case Nos. 14824 and 14825 (1977). In Comish, the Campus Police were acting under the direction of a special deputy of the Salt Lake County Sheriff's Department and were, therefore, held to be acting within their jurisdiction. No such authority exists in this case. Neither appellant nor the State has even attempted to submit to the Court any chain of authority as existed in Comish.

What does appear in this case are facts similar to Hurley, 28 Ut. 2d 248, 501 P.2d 111 (1972). The Campus Police here as in Hurley, acted on property located off the campus. The activity in both cases did not involve "exigent circumstances of the direct and immediate interests of the institution concerning its property students or employees" was involved. Hurley, 28 Ut. 2d at 248. Under these circumstances, the Campus Police do not fall within the ambit of 53-45-5, Utah Code Anno., 1953. Consequently, appellant was arrested by police without State Authority. No citizen's arrest is intended or implied based on after-arrest conduct, i.e, advise of rights, request to submit to chemical test, and booking in jail without seeking assistance from any other law enforcement agency. In this particular instance, however, the State claims a valid arrest not because the arrest was properly carried out, but because appellant pled guilty. The State's position is untenable in the face of Blackledge.

Appellant contends that it is a violation of due process for the Campus Police acting under that authority to arrest appellant when it has no police power to do so. The State has not authorized the arrest of appellant by Campus Police under these circumstances. In effect, the State has "hailed" appellant into court when it had no right to do so. It is precisely the factual and legal situation that existed in Blackledge, supra, that exists here. Appellant submits to the Court that Blackledge, supra,

and Menna, supra, as the Supreme Law of the Land are controlling in this case.

Appellant cannot consent to the subject matter jurisdiction of a court. It is an established principle of law that the parties together, even with the court's approval, cannot consent to subject matter jurisdiction where none exists, Rule 12(h), Utah Rules of Civil Procedure, and Hardy v. Meadows, 71 Ut. 255, 264 P. 268. The lower court's finding that that a plea of guilty granted in personam jurisdiction (R. 9) ignores the issues. The point is that the Court lacked subject matter jurisdiction not in personam jurisdiction because it had no right to hear a case the State was precluded by law from bringing in the first place. The State had no right to arrest appellant for this crime under these circumstances or by the particular officers involved in this case. The State had no right to arrest because the violation was a misdemeanor and no duly authorized person was present observing the alleged drunken driving. The State had no right to arrest by these officers because they were not police officers of the State and were acting outside their jurisdiction.

Therefore, appellant requests this Court find that absent jurisdiction over the subject matter at the time of arrest by University Campus Police, acting as such, deprived the original trial court of power to hear the case.

CONCLUSION

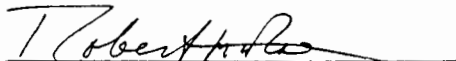
Appellant's guilty plea does not waive jurisdictional defenses, and the State's violation of due process by arresting appellant when not authorized by law to do so denied the Salt Lake City Court jurisdiction to hear the case. Appellant, therefore submits to the Court that under authority of Comish, supra; In Hurley, supra; Blackledge, supra, and Menna, supra, the District Court's judgment should be reversed and appellant's fine returned and record expunged.

Respectfully submitted,



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Mailed two copies of the foregoing Appellant's Brief, postage prepaid, September 27, 1977, to Attorney General of Utah, Utah State Capitol, Salt Lake City, UT 84111.



Robert M. McRae