

2001

# William Wayne Wellwood v. John W. Turner : Brief of Appellant

Utah Supreme Court

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William Wayne Wellwood; Appellant Pro-Se.

Vernon B Romney; Attorney General; Attorney for Appellee.

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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WILLIAM WAYNE WELLWOOD, )

Petitioner-Appellant, )

VS. )

Case No.

13350

JOHN W. TURNER, PAST )

WARDEN, AND SAMUEL W. )

SMITH, PRESENT WARDEN, )

UTAH STATE PRISON, et al; )

Respondent-Appellee. )

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BRIEF OF APPELLANT

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STATEMENT OF THE NATURE OF THE CASE

*This is an Appeal brought before the above Utah Supreme Court from the denial of a Writ of Habeas Corpus in the lower Third Judicial District Court of Salt Lake County, State of Utah in Case No. 210612, the Petition for a Writ of Habeas Corpus having been brought by Petitioner-Appellant Pro Se; before the lower Third Judicial District Court, on January 26, 1973, and the said Petition for a Writ of Habeas Corpus having been Denied by the lower Third Judicial - District Court of Salt Lake County, State of Utah, on October 17th 1973. And the foregoing matter on Appeal in the instant case at bar was subsequently pursued on Appeal to the Utah Supreme Court from the Decision rendered against Petitioner-Appellant in the lower District Court.*

DISPOSITION IN LOWER COURT

*The matter on Appeal in the case at bar arises from the entry of a Disposition entered in the lower Third Judicial District Court of Salt Lake County, State of Utah. in Case -*



action on September 27, 1973, and the Court entered its decision on the record denying Petitioner-Appellant's Petition for a Writ of Habeas Corpus on October 4, 1973.

### RELIEF SOUGHT ON APPEAL

Petitioner-Appellant, in the instant case at bar seeks a Reversal of the lower District Courts Decision Denying his Petition for a Writ of Habeas Corpus, and to be Released on a Writ of Habeas Corpus as prayed for in his Petition for a Writ of Habeas Corpus, which was denied in the lower District Court or in the Alternative Petitioner-Appellant seeks that the matter in the case at bar shall be remanded to the lower District Court from which this Appeal stems, with this Court Ordering and Directing that Petitioner-Appellant shall be properly afforded a full and fair Evidentiary Hearing on his Petition for a Writ of Habeas Corpus with all of the pertinent and material facts being adequately and appropriately and fully developed at said hearing and with the decision of such lower District Court upon being fully appraised of the material facts shall at or after such Evidentiary Hearing render its decision based upon the material facts as are presented at such hearing

### STATEMENT OF THE FACTS

Petitioner-Appellant submits that he is presently unlawfully and unconstitutionally confined, detained and restrained in his personal liberty at the Utah State Prison, located at Draper, Utah, by the Respondent-Appellee.

Petitioner-Appellant respectfully submits that the cause or pretense of such unlawful and unconstitutional restraint being imposed upon him at the Utah State Prison, is by virtue of a Judgment and Conviction having been entered against him in the Third Judicial District Court of Salt Lake County, State of Utah, in Criminal Case No. 23868, on January 13, 1972, for the Crime of Robbery.

Petitioner-Appellant respectfully submits that an Appeal from such Conviction against him for the Crime of Robbery was not filed nor pursued by him to the Utah Supreme Court for the reason that Petitioner-Appellant

the additional reason that Petitioner-Appellant was indigent and unversed in the law, and would not have properly been aware of what was a meritorious cause of action to pursue on Appeal and what was not.

Such confinement and restraint as is presently imposed upon Petitioner-Appellant at the Utah State Prison, is unlawful and unconstitutional for the reasons as will be hereinafter submitted for this Courts determination in the instant case at bar.

The facts criticle and pertinent to this cause of action are that Petitioner-Appellant was improperly and unlawfully taken into custody and subsequently placed under arrest, without any Warrant of Arrest having been issued against Petitioner-Appellant by any Lawful Judicial Court and without Lawfully Probable Cause having been in existence that could lawfully or justifiably be deemed by any reasonable person to meet procedural, lawful and constitutional requirements. Petitioner Appellant further submits that upon being improperly taken into custody along with Donald Harris a Co-Defendant and a Co-Petitioner in the matter of the Petition for a Writ of Habea Corpus herein under Appeal in the instant case at bar were each without having been first properly advised of and made aware of their rights as secured under *Miranda v. Arizona*, and as procedurally required Petitioner-Appellant William Wayne Wellwood, and Donald Harris were each compelled to be and subjected to be the victims of an unreasonable search and seizure of both their persons and effects without any - search warrant or arrest warrant having at any time been issued to lawfflly authorize either the search and seizure of their persons and effects or to lawful authorize their arrests, and without any Probable cause existing to authorize either their arrest or the search and seizure of their persons and effects. Again they Petitioner-Appellant were deprived of their procedural lawful and constitutional rights by being compelled to against their will and under duress to participate in a Police Line-Up without first having been properly advised of their rights, and without first having been afforded an opportunity to consult with, seek the advice of legal counsel or without being allowed to have legal counsel be present at

constitutional rights. Petitioner-Appellant and his co-defendant were identified by pre-trial photographic identification which was illegally, unconstitutionally, improperly and suggestively obtained and made against them. Petitioner-Appellant and his co-defendant were effectively denied the effective aid and assistance of legal counsel to represent them during each of the critical stages of the proceedings against them, for the reason that legal counsel was as a matter of record not timely appointed to represent them during each of the critical stages of the proceedings against them. Counsel was finally appointed to represent Petitioner-Appellant from the Salt Lake Legal Defender Association where such counsel is paid for from funds supplied from State Agencies, and as a result Petitioner-Appellant, submits that he verily believes that in any event any legal counsel from the Salt Lake Legal Defender Association would of necessity have had a real and genuine conflict of interest in affording Petitioner-Appellant and his co-defendant adequate and appropriate aid and assistance or proper representation of legal counsel. In the instant case at bar the Legal Counsel Appointed by the Court to Represent Petitioner Appellant and his co-defendant failed in their duties as required by Law and by Constitutional requirements to timely and properly procedurally required as a requirement of due process and equal protection of the law, contact Petitioner-Appellant and his co-defendant and to then discuss with them the facts and circumstances surrounding their arrest and of the case or the crime for which they were accused of having committed: to-wit: the accusation against them for the crime of Robbery, for the purpose of and to properly discuss the actual facts and circumstances of the case, and to properly and appropriately discuss the possible defenses that may have been available to them. Counsel further failed to make procedurally required proper investigations both factual and legal in order to afford Petitioner-Appellant adequate representation by legal counsel. In the case at bar Ms. Margaret Taylor, was appointed from the Salt Lake Legal Defender Association to represent - Petitioner-Appellant, William Wayne Wellwood, and Mr. Dav Rhodes of the Salt Lake Legal Defender Association was appointed to represent his co-defendant Donald William Harr and each of the said Salt Lake Legal Defender Association Attorneys failed in their duties to properly afford Petitioner-

*The legal procedural requirements providing that indigent shall be properly afforded the effective aid and assistance of legal counsel when they are accused of crimes wherein they face the possible deprivation of life or of their personal - individual liberty is provided for under the requirements of Section 77-64-1 of Utah Code Annotated and under the provisions and requirements of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and in the instant case at bar here on Appeal Petitioner-Appellant submits that the Conviction against him and his co-defendant was obtained in deprivation and in violation of their constitutional rights as secured under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Petitioner-Appellant further - submits that as the record clearly establishes him and his co-defendant were effectively denied a Fair and Impartial Trial and subsequently of Due Process and Equal Protection of the Law. Petitioner-Appellant and his co-defendant each through their respective Court Appointed legal counsel made proper and timely motions for severance and separate trials, which were denied by the Court. Petitioner-Appellant and his - co-defendant were both improperly compelled to be tried in jail clothing that together with the fact that all of the evidence against Petitioner-Appellant and his co-defendant was clearly unconstitutionally highly suggestive and there was in any event from the facts of record no way in which Petitioner-Appellant or his co-defendant could have possibly been afforded a Fair and Impartial Trial. Petitioner-Appellant further respectfully submits that both himself and his co-defendant were effectively denied their constitutional and procedural right to Appeal from such conviction against them for the Crime of Robbery for the reason that they were the victims of having been threatened with being subjected to continuous and repeated prosecutions being initiated against them, and as a result were coerced under duress to withdraw their pending direct Appeal from the illegal and unconstitutional conviction against them for the Crime of Robbery.*

## ALLEGATIONS

1. PETITIONER-APPELLANT ALLEGES THAT THE ARREST AGAINST HIM AND HIS CO-DEFENDANT AND THE SUBSEQUENT ILLEGAL SEARCH AND SEIZURE OF THEIR PERSONS AND EFFECTS WITHOUT BENEFIT OF A LAWFUL WARRANT OR PROBABLE CAUSE CAUSING THEIR CONVICTION FOR THE CRIME OF ROBBERY TO BE OBTAINED AGAINST THEM ON CONSTITUTIONALLY TAINTED EVIDENCE IN DEPRIVATION OF AND IN VIOLATION OF THEIR CONSTITUTION RIGHTS AS SECURED TO THEM AS A MATTER OF PROCEDURALLY REQUIRED DUE PROCESS AND EQUAL PROTECTION OF THE LAW UNDER THE PROVISIONS OF THE FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

See: *American Law Institute Model Code of Pre-Arraignment Procedure*, (Official Draft No. 1, 1972), (Under Sections 230- and 230-5.) and the case authorities as set forth in *Katz v. United States*, 389 U.S. 347, 356-357 (1968); *Johnson v. United States*, 333 U.S. 10, 13-14 (1948); *Coolidge v. New Hampshire*, 302 U.S. 443, 449 (1971); *Chimel v. California*, 395 U.S. 752 (1969); and *Scheneckloth v. Bustamonte*, 412 U.S. 218 (1973). Also applicable is *Miranda v. Arizona*, 384 U.S. 436 (1966).

2. THE LINEUP PROCEDURE AND SUBSEQUENT LINEUP IDENTIFICATION OF PETITIONER-APPELLANT AND HIS CO-DEFENDANT, WITHOUT THEIR BEING ALLOWED TO BE AFFORDED THE AID, ADVICE, ASSISTANCE OR PRESENCE OF LEGAL COUNSEL AS WELL AS THE IMPROPER, SUGGESTIVE AND HIGHLY PREJUDICIAL PHOTOGRAPHIC IDENTIFICATION OF BOTH PETITIONER-APPELLANT AND HIS CO-DEFENDANT, EFFECTIVELY CAUSED THEM TO BE CONVICTED OF THE CRIME OF ROBBERY, AND THE RESULT OF THE DEPRIVATION OF AND

FOURTEENTH AMENDMENTS TO THE  
UNITED STATES CONSTITUTION.

In argument see: United States v. Wade, 388 U.S. 218 (1966); Wilbert v. California, 388 U.S. 263 (1967); Simmons v. United States, 390 U.S. 377 (1968); Foster v. California, 394 U.S. 440 (1969); Miranda v. Arizona, 384 U.S. 436 (1966); and Coleman v. Alabama, 399 U.S. 1 (1970).

3. THE DENIAL OF SEVERENCE AND SEPERATE TRIALS AS PROPERLY MOTIONED FOR BY PETITIONER-APPELLANT IN ESSENCE EFFECTIVELY CAUSED THEM TO BE DENIED A FAIR AND IMPARTIAL TRIAL IN DEPRIVATION OF AND IN VIOLATION OF THEIR RIGHTS AS SECURED UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES - CONSTITUTION.

In argument see: In re Oliver, 333 U.S. 357; Tumey v. Ohio, 431 U.S. 510; In re Murchison, 349 U.S. 133, 136; Thompson v. City of Louisville, 362 U.S. 199; and Bruton v. United States, 391 U.S. 123 (1968).

4. THE TRIAL COURT ERRED PREJUDICIALLY AND VIOLATED PETITIONER-APPELLANTS RIGHTS TO BE AFFORDED A FAIR AND IMPARTIAL TRIAL BY ALLOWING THE TRIAL TO PROCEED AND TO BE HELD WHILE PETITIONER-APPELLANT AND HIS CO-DEFENDANTS WERE WEARING JAIL CLOTHING, IN DEPRIVATION OF AND VIOLATION OF THEIR RIGHTS AS SECURED UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

In argument see Atkins v. State, 210 So. 2d 9 (Fla 1968); 1 Am. Jur. 2d Criminal Law, 239; Miller v. State, 457 S.W. 2d 348 (Ark. 1970); Ephraim v. State, 471 S.W. 2d 798; - Tex 1971; and Hernandez v. Beto, 443 F. 2d 634 (5th Cir. 1971).



5. PETITIONER-APPELLANT AND HIS CO-PETITIONER WERE EFFECTIVELY DENIED AND WERE NOT PROPERLY AS PROCEDURALLY REQUIRED A FULL AND FAIR EVIDENTIARY HEARING IN THE LOWER DISTRICT COURT IN THE CASE AT BAR ON THEIR PETITION FOR A WRIT OF HABEAS CORPUS HEREIN ON APPEAL FOR THE REASON THAT THE FACTS WERE NOT PROPERLY AND ADEQUATELY DEVELOPED AND ESTABLISHED AT THE STATE COURT EVIDENTIARY HEARING HELD IN THE LOWER DISTRICT COURT. AND SUBSEQUENTLY PETITIONER -APPELLA WAS DENIED DUE PROCESS AND EFFECTIVELY DEPRIVED OF THE RIGHT TO HABEAS CORPUS IN VIOLATION OF THE RIGHTS SECURED TO HIM UNDER ARTICLE 1 SECTION 9 CLAUSE 2 OF THE UNITED STATES CONSTITUTION AND SECTION 1 UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

*In argument see: Sanders v. United States*, 373 U.S. 1 (1963) and *Cruz v. Hauck*, 404 U.S. 59 (1971).

6. THE FAILURE OF PETITIONER-APPELLANT'S CO-COUNSEL APPOINTED LEGAL COUNSEL - MR. RAYMOND SHUEY, FROM THE SALT LAKE LEGAL DEFENDER ASSOCIATION TO FILE A PROPER AND A TIMELY NOTICE OF APPEAL FROM THE LOWER COURT'S DENIAL OF PETITIONER-APPELLANT'S PETITION FOR A WRIT OF HABEAS CORPUS EFFECTIVE CAUSED PETITIONER-APPELLANT AND HIS CO-PETITIONER TO PROPERLY BE AFFORDED ADEQUATE AND APPROPRIATE APPELLATE REVIEW OPPORTUNITIES ON HABEAS CORPUS IN DEPRIVATION OF AND VIOLATION OF THEIR RIGHTS AS SECURED UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES

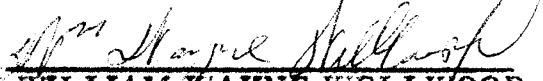
*In argument see Johnson v. Avery, 393 U.S. 483 (1969); Gilmore v. Lynch, (1972), Cruz v. Hauck, 404 U.S. 59 (1971).*

### CONCLUSION

**WHEREFORE:** For the foregoing reasons and based upon the foregoing facts Petitioner-Appellant respectfully submits that he verily believes that he is entitled to be granted a Reversal of the lower Court's opinion and to be granted the relief as prayed for in the case at bar.

Dated this 13<sup>th</sup> date of June 1974.

**RESPECTFULLY SUBMITTED**

  
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*Prepared by Ray Dodge*



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