

1977

State of Utah v. Benny Claude Hutcheson : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH

Plaintiff-Respondent,

-vs-

BENNY CLAUDE HUTCHESON,

Defendant-Appellant.

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Case No. 15390

BRIEF OF APPELLANT

APPEAL FROM A JUDGMENT OF THE THIRD
JUDICIAL DISTRICT COURT OF SALT LAKE
COUNTY, STATE OF UTAH, THE HONORABLE
PETER F. LEARY, JUDGE.

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FILED

MAR 30 1977



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March 31, 1978

FILED

MAR 31 1978

Honorable A. H. Ellett
Chief Justice
Utah Supreme Court
State Capitol
Salt Lake City, Utah 84114

Clerk, Supreme Court, Utah

Re: State of Utah v. Benny Claude
Hutcheson, Case No. 15390

Dear Chief Justice Ellett:

The appellant's attorney in the above entitled case, in harmony with Anders v. California, 386 U.S. 738, 87 S.Ct. 1296, 18 L.Ed.2d 493 (1967), stated that it is his opinion that the issues raised on appeal are not sound and has requested that he be allowed to withdraw.

This office feels that it would be futile to respond to a brief of this nature when likely the only assistance we could lend the Court would be to repeat the statements of the appellant's attorney.

We feel that this would lend no beneficial impact to the Court, but we are willing to respond to any particular issues or do additional research at the Court's direction if requested.

We would appreciate it if you would accept this letter as a formal response in lieu of filing a brief and either proceed to dismiss the appeal on its merits or in harmony with Anders v. California. If the Court is desirous of having additional input from our office in any particular, we would be happy to comply upon direction.

Very truly yours,

EARL F. DORIUS
Assistant Attorney General

EFD/sh

cc: Stephen R. McCaughey, Esq.

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CASES CITED

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STATUTES CITED

Utah Code Ann. §76-4-101 (1953).	1
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IN THE SUPREME COURT OF THE
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STATE OF UTAH,

Plaintiff-Respondent,

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Case No.

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant, with a co-defendant Edward Lane Cornish, was charged with attempted criminal homicide in violation of Utah Code Ann. §76-4-101 (1953).

DISPOSITION IN LOWER COURT

Appellant and co-defendant Cornish were tried jointly before a jury in Third Judicial District Court of Salt Lake County, the Honorable Peter F. Leary, presiding. On August 24, 1977, appellant was found guilty of attempted criminal homicide and co-defendant Cornish was acquitted.

RELIEF SOUGHT ON APPEAL

After a careful review of the trial record, counsel for appellant finds no grounds for appeal and seeks leave of court to withdraw as counsel of record for

STATEMENT OF FACTS

Appellant Hutcheson and co-defendant Cornish were charged with attempted criminal homicide in that they attempted intentionally, knowingly, and unlawfully to cause the death of Franklin V. Calahan, Jr., on May 16, 1977.

At the time of the alleged crime, both defendants and the victim were inmates at the Utah State Prison. The incidents occurred within the medium security blocks of said prison.

At the trial, testimony was elicited from several witnesses to the effect that appellant confronted the victim Calahan on the date in question and inflicted a number of knife wounds upon his person.

Defendant himself testified it was his intent to take the life of the victim, claiming self-defense as an excuse.

The jury returned a verdict of guilty as to appellant Hutcheson and not guilty as to the defendant Cornish.

ARGUMENT

POINT I

APPELLANT'S CASE IS WHOLLY FRIVOLOUS
AND WITHOUT MERIT

Under the doctrine of Anders v. California,

den. 388 U. S. 924, 87 S. Ct. 2094, 18 L. Ed 2d 1377, appointed counsel for an indigent defendant must, on defendant's first appeal from a conviction, carefully review the trial record to determine if there are any arguable issues which might support an appeal. If he finds no grounds for appeal, he must advise the court of the frivolous nature of the appeal and request to withdraw.

In conformity therewith, counsel for appellant herein has carefully examined the entire trial record and can find no arguable issues to support an appeal. It is counsel's considered opinion the instant appeal is frivolous and without merit.

CONCLUSION

For the reasons above stated, counsel requests permission to withdraw as counsel of record.

Respectfully submitted,

STEPHEN R. McCAUGHEY
Attorney for Respondent
321 South Sixth East
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